TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 131

ALEXANDER M. EARLE, MORRIS D. EARLE, AND JAMES EARLE, PARTNERS, TRADING UNDER THE FIRM-NAME OF EARLE AND COMPANY, APPELLANTS,

vs.

JAMES H. McVEIGH.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED JANUARY 9, 1874.

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1, 2 In the circuit court of the United States for the eastern district of Virginia, on Wednesday, October 22d, 1873.

Present, Hon. Hugh L. Bond, judge.

JAMES H. McVEIGH, PLAINTIFF,
against
ALEXANDER M. EARLE, MORRIS D. EARLE, and James Earle, partners trading under firm-name of Earle & Co., defendants. } No. 188. In equity.

Be it remembered that, heretofore, to wit, on the 21st day of December, 1871, came the defendants, by their attorney, and filed in the clerk's office of said court a transcript of the record of the circuit court of Alexandria County, Virginia, in the above-named cause, which is in the words and figures following, to wit:

3 *Style of suit.*

VIRGINIA:

In the circuit court of Alexandria County.

JAMES H. McVEIGH, PLAINTIFF,
against
ALEXANDER M. EARLE, MORRIS D. EARLE, & James Earle, partners trading under firm-name of Earle & Co., and S. F. Beach, defendants. } In chancery.

Among the records, files, and judicial proceedings of the circuit court of the county of Alexandria, are the following, to wit:

Be it remembered that, heretofore, to wit, on the 10th day of June, in the year one thousand eight hundred and seventy-one, came James H. McVeigh, by George W. Brent &. C. W. Wattles, esquire, his attorneys, and filed with the clerk of the circuit court of the county of Alexandria his bill in chancery, with an injunction granted by Hon. James Keith, judge of said court, thereon endorsed, against Alexander M. Earle, Morris D. Earle, & James Earle, partners, trading under the firm-name of Earle & Co., and S. F. Beach; which bill in chancery & injunction thereon endorsed and exhibits therewith filed, are in the words following, to wit:

Bill.

4 To the honorable James Keith, judge of the circuit court for Alexandria County, sitting in chancery:

A citizen of the State of Virginia, James H. McVeigh, plaintiff, brings this his bill against Alexander M. Earle, Morris D. Earle, and James Earle, citizens of the State of New York, partners, trading under the firm-name of Earle & Co., and S. F. Beach, a citizen of the State of Virginia, defendants.

The plaintiff states and charged as follows: That, at the April term, 1862, of the county court for Alexandria, the defendants, Earle & Co., then still being citizens of New York, recovered a judgment against the plaintiff for eight thousand four hundred and fourteen $\frac{34}{100}$

dollars, ($8,414.34,) with interest on $625.06, from May 21st, 1861, on $1,500, from May 1st, 1861, on $2,110.83, from June 1st, 1861, on $924.90, from July 8th, 1861, on $929.96, from August 8th, 1861, and on $2,223.39, from June 29th, 1861, till paid, with $7.01 costs; that, at the same April term, the said Alexander M. Earle and Morris D. Earle, under the same firm-name of Earle & Co., recovered another judgment against the plaintiff for $3,035.49 with interest and costs thereon.

5 That said judgments were recovered by defendants on the following returns made on the summonses issued in these causes. Executed the within summons Feby. 24, 1862, on James H. McVeigh, by serving a copy thereof, posted at the front door of his usual place of abode, neither he nor his wife, nor any white person, who is a member of his family, and above the age of 16 years, being found at his said usual place of abode. (Signed) T. J. Edelin, crier Alexandria County court.

That about six weeks prior to the time when the forces of the United States occupied the city of Alexandria, on the 24th day of May, 1861, the family of the plaintiff had left Alexandria for a visit to Loudoun County, and was there at the date of said occupation; some five or six days after said occupation, the plaintiff also left Alexandria and joined his family in Loudoun County, leaving no white person at his former residence and place of abode in Alexandria. He left, however, as his manager and agent, Robert Crupper, a resident and citizen of that place, a fact well known to the business portion of the city, and especially to the defendant, S. F. Beach, the attorney for the defendants, Earle & Co., in the said suits.

6 That, early in the fall of 1861, the plaintiff quit his residence in Loudon, and went to Richmond, in the State of Virginia, when he entered into business; that his family joined him there early in 1862; that, in May, 1862, the plaintiff and family removed to Charlottesville, Virginia, where they resided about eighteen months; from thence they removed to Lynchburg, in the said State, where they resided at and after the close of the war; that all the said places where he resided during the war, where at times of said residence in the firm and exclusive control and occupation of the confederate forces, and that during the period of the war was at all times within the confederate lines, and engaged in business pursuits. The fact that the plaintiff was absent from and was with his family residing in the confederate lines, was known to the defendants, Earle & Co., and especially to their attorney, the said S. F. Beach, and also to the said T. J. Edelen, who made return on the said summonses.

7 The plaintiff is informed, and so believes, that, shortly after leaving Alexandria, the authorities of the United States took possession of his late place of abode, and used it for hospital purposes, and so used and occupied it at the date and pretended service of the said summonses.

The plaintiff avers, and so charges, that the return endorsed on said summonses as above mentioned, was false and fraudulent; that it was not posted at the front door of his usual place of abode; he is therefore advised that the said return of "executed" and the judgments by default entered thereon as charged, are illegal and fraudulent, and should be annulled and set aside.

The plaintiff begs leave on or before the first hearing to file a transcript of the record of the said judgements as an exhibit with this bill. That the said Earle & Co., after they obtained the said judgements, in September, 1864, still being citizens of the State of New York, instituted

a suit in chancery, in the said county court for Alexandria, to subject the real estate in that city, belonging to the plaintiff, to the payment of the said judgements. The said bill, amongst other things, charges that the rents and profits of the said real estate would be insufficient to satisfy the said judgements within five years.

8 The bill then charges on oath "that the said defendant (meaning the plaintiff) is reported to be in sympathy with the so-called Confederate States; that he has voluntarily left his usual place of abode in the said city of Alexandria, and has gone out of the reach of personal service of civil process issuing from the county of Alexandria, in which he last remained for more than ninety days after having so left, and still so remains."

The said Earle & Co., therefore, prayed that their said judgements might be enforced by a sale of the said real estate for their satisfaction. The said Earle & Co. then proceeded in the chancery suit by an order of publication, and subsequently, at the June term of the said county court, 1865, obtained a decree for the sale of the said real estate, and appointed S. F. Beach commissioner of sale, and the said suit was subsequently, on the 8th day of June, 1866, on motion of Earle, removed to the circuit court for Alexandria County. And the plaintiff begs on or before the final hearing to file as an exhibit with this bill a transcript of the record of the decree complained of.

9 The plaintiff shews unto your honor that the judgments aforesaid were wholly unknown to him until some time after they had been obtained. That he was not aware of the existence of the said decree for a sale of his real estate until a very recent period. He is advised that the said decree so rendered against him for the sale of his property on the order of publication against him is illegal and fraudulent, and should be treated as a nul'ity.

But, so it is, may it please your honor, the said Earle & Co., contriving together to injure and oppress the plaintiff, have recently caused the defendant, S. F. Beach, commissioner of sale, to advertise the real estate of the plaintiff for sale on the 17th day of June next; a copy of the advertisement of said sale is herewith filed as Exhibit J. H. M., No. 1., as a part of this bill.

All which acts and proceedings are contrary to equity and justice, and tend to the manifest wrong and injury of the plaintiff.

To the end, therefore, the plaintiff prays, that the said Alexander M. Earle, Morris D. Earle, and James Earle, partners, trading under
10 the firm-name of Earle & Co., citizens of the State of New York, and S. F. Beach, commissioner as aforesaid, a citizen of the State of Virginia, be made parties defendant to this bill, and that they may true and perfect answer make to each and all of the said allegations of this bill; that the said judgments of the county court of Alexandria may be decreed null and void, and the same be set aside; and that he may be allowed to defend said claim, that the said decree may be reviewed by this court, and the same also decreed null and void, and the same set aside; that the said defendants and each of them may be enjoined and restrained from any proceedings on the said judgements, or from any sale or proceedings under the said decree, and that your honor will grant to the plaintiff such other and further relief in the premises as to the court shall seem proper and equitable,

May it please your honor to grant to the plaintiff the Commonwealth's

writ of summons and injunction to the said defendants directed, commanding them, &c.

11 JAMES H. McVEIGH,
By his Counsel.
BRENT & WATTLES,
For Plaintiff.

ALEXANDRIA CITY, *ss:*

James H. McVeigh, whose name is signed to the foregoing bill, this day appeared be the undersigned, a notary public for the city aforesaid, and made oath that the matters and things set forth in the foregoing bill are true, so far as the same are set forth of his own knowledge *true*, & those set forth upon the knowledge of others he believes to be true.

Given under my hand this 3 June, 1871.

S. C. NEALE,
Notary Public.

Order of injunction.

INJUNCTION.

To the clerk of the circuit court, Alex. County, Va.:

An injunction is awarded in accordance with the prayer of the plaintiff's bill, to take effect when the plaintiff, or some one for him, shall file a bond before the clerk of the court in the penalty of $500, (the debts being secured upon real estate,) conditioned as the law directs.

12 JAMES KEITH.

JUNE 9, 1871.

Exhibit No. 1, with bill.

1st Exhibit, with bill.

Plees at the court-house of the county of Alexandria, before the worshipful justices of said county, on Wednesday, the 9th day of April, in the year one thousand eight hundred and sixty-two:

Be it remembered that, heretofore, to wit, on the 12th day of February, in the year aforesaid, came Alexander M. Earle & Morris D. Earle, late partners, trading under the firm-name of Earle & Co., by their attorney, and sued out of the clerk's office of the county of Alexandria *County* a writ of summons against James H. McVeigh and Edgar T. McVeigh, partners, trading under the firm-name of McVeigh & Son, of a plea of trespass on the case, which writ of summons, with the return thereon, is in the words and figures following:

The Commonwealth of Virginia to the crier of Alexandria County, greeting:

We command you to summon James H. McVeigh & Edgar T. McVeigh, par*d*ners, trading under the firm-name of McVeigh & Son, if they
13 be found within*g* your bailiwick, to appear at the clerk's office of our county court for our said county of Alexandria, at the rules to be holden for said court on the first Monday in March next, to answer Alexander M. Earle and Morris D. Earle, late par*d*ners, trading under the firm-name of Earle and Co., of a plea of trespass on the case; damages, $4,000; and have then there this writ.

Witness Jefferson Lacey, clerk of our said county court, at the court-house aforesaid, the 12th day of February, 1862, and in the eighty-sixth year of the Commonwealth.

JEFFERSON LACEY, *Clerk.*

(Endorsement on the back of said summons.)

Executed the within summons, February 24, 1862, on James H McVeigh by leaving a copy thereof posted at the front door of his usual place of abode, neither he, nor his wife, nor any white person who is a member of his family and above the age of sixteen years, being found at his said usual place of abode. Edgar T. McVeigh is a non-resident of Virginia.

Feb. 24, 1862.

T. J. EDELEN,
Crier Alexa. County Court.

14 And at another day, to wit, at rules held for the county of Alexandria, in the clerk's office of the county court of said county, on the 5th day of March, in the year aforesaid, came the plaintiffs by their attorney, and filed their declaration against the defendants, which declaration is in these words:

In the county court of Alexandria County, Va., Alexandria County, to wit:

Alexander M. Earle and Morris D. Earle, late parteners, trading under the firm-name of Earle & Co., complain of James H. McVeigh and Edgar T. McVeigh, parteners, trading under the firm-name of J. H. McVeigh & Son, who have been duly summoned to answer of a plea of trespass on the case.

For that whereas the said defendants, partners as aforesaid, heretofore, to wit, on the 25th day of September, 1860, at the county aforesaid, made their certain note in writing and subscribed their firm-name thereto, by which said note, bearing date on the day and year
15 aforesaid, they then and there promised to pay, seven months after date, to the order of the plaintiffs, by their firm-name aforesaid, twenty-one hundred ninety-six $\frac{21}{100}$ dollars, (2,196.21,) at City Bank, New York, value received, and then and there deliver the note to the plaintiff; which said period of seven months has long since elapsed.

And for that whereas the said defendants, parties as aforesaid, heretofore, to wit, on the 16th day of November, 1860, at the said county, made their certain other note in writing and subscribed their firm-name thereto, by which said note, bearing date on the day and year last aforesaid, they promised to pay, five months after date, to the order of the plaintiffs, by their firm-name aforesaid, eight hundred and thirty-nine $\frac{28}{100}$ dollars, ($839.28,) at Bank of the Old Dominion at Alexa., value received, with current rate of exchange on New York, and then and there delivered the said note to the plaintiffs; which said period of five months has long since elapsed.

And for that whereas the said defendants, partners as afore-
16 said, heretofore, to wit, on the 1st day of June, 1861, at the county aforesaid, were indebted to the plaintiff's, partners as aforesaid, in the sum of three thousand and thirty-five $\frac{49}{100}$, ($3,035.49,) for the price and value of goods then and there sold and delivered by the plaintiffs to the defendants at the latter's request;

And in the sum of three thousand and thirty-five $\frac{49}{100}$ dollars, ($3,035.49,) for money then and there lent by the plaintiffs to the defendants at the latter's request.

And in the sum of three thousand thirty-five $\frac{49}{100}$ dollars, ($3,035.49,) for money then and there had and received by the defendants for the use of the plaintiffs;

And in the sum of three thousand thirty-five $\frac{49}{100}$ dollars, ($3,035.49,) for money found to be due from the defendants to the plaintiffs on an account then and there stated between them.

And the said defendants, being so indebted, in consideration of said indebtedness, afterward, to wit, on the day and year aforesaid,
17 at the county aforesaid, then and there promised to pay the said several last mentioned monies respectively to the plaintiffs on request.

Yet the said defendants have broken their said several promises, and, though often requested, they have not, nor have either of them, paid the whole or any part of said monies, but so to do have and each of them hath always hitherto neglected and refused, and they do and each of them doth still refuse, to the damage of the plaintiff's $4,000, and therefore they bring suit, &c.

S. FERGUSON BEACH,
Atto. for the Plaintiffs.

Whereupon the defendant James H. McVeigh, being summoned and not appearing, on motion of the plaintiff, by their attorney, it is ordered that judgment be entered for the plaintiffs against the defendant James H. McVeigh for what damage the plaintiffs have sustained by occasion of the non-performance of the promises and assumptions in the declaration mentioned, unless the said defendant should appear and plead to issue at the then next rules, and this case abates as to the defendant Edgar T. McVeigh by the crier's return on the writ of summons.

18 At which day, to wit, at rules held in the clerk's office of the county court of Alexandria County, on the 31st day of March, in the year aforesaid, the defendant James H. McVeigh, still failing to appear, on motion of the plaintiffs, by their attorney, it was ordered that the last order made against him in this case be confirmed, and that the plaintiffs damages be ascertained by a jury at the then next term.

And now at this day, to wit, at a county court continued and held for the county of Alexandria at the court-house thereof, on Wednesday, the 9th day of April, in the year 1862, came the plaintiffs, by their attorney, and the defendant, being solemnly called, came not, whereupon a jury, to wit, Isaac B. Lovejoy, George Davis, Henry Helmuth, William Johnson, Joseph Colton, John P. Whitmore, Oscar C. Whittlesay, Charles Wade, John Devan, A. J. Ogden, John Breen, and Henry B. Davis were sworn diligently to enquire of damages in this case, upon their oath returned their verdict in the following words: "We of the jury assess the plaintiffs' damages at three thousand and thirty-five dollars
19 and forty-nine cents, with interest on eight hundred & thirty-nine $\frac{28}{100}$ dollars, part thereof from the 19th day of April, 1861, till paid, and on two thousand one hundred and ninety-six $\frac{21}{100}$ dollars, the residue thereof, from the 1st day of May, 1861, till paid.

"ISAAC B. LOVEJOY, *Foreman.*"

Therefore it is considered by the court that the plaintiff recover against the defendant their damages assessed as aforesaid, with interest thereon

from the times fixed by the jury in their said verdict till paid, and their costs by them about their suit in this behalf expended; and the said defendant in mercy, &c.

The following are copies of the notes upon which this action was founded:

$2,196.21.] ALEXA., VA., 25*th Sept.*, 1860.

Seven months after date we promise to pay to the order of Earle & Co. twenty-one hundred ninety-six $\frac{21}{100}$ dollars, at City Bank, New York, value received.

J. H. McVEIGH & SON.

20 No. 761. Due April 27, '61.

(Endorsement on back:) EARLE & CO.

$839.28.] ALEXA., VA., *Nov.* 16, 1860.

Five months after date we promise to pay to the order of Earle & Co. eight hundred thirty-nine $\frac{28}{100}$ dollars, at Bank of the Old Dominion, at Alexa., with current rate of exchange on New York, value received.

J. H. McVEIGH & SON.

No. 873. Due Ap'l 19.

(Endorsement on back:) Pay P. E. Hoffman & Co., or order. EARLE & Co.

A copy of the record.
Teste. GEORGE C. SEATON, *Clk.*

EXHIBIT No. 2.

2nd Exhibit with bill.

Pleas at the court-house of the county of Alexandria, before the worshipful justices of said county, on Thursday, the 10th day of April, in the year one thousand eight hundred and sixty-two.

Be it remembered that heretofore, to wit, on the 12th day of
21 February, in the year aforesaid, came Alexander M. Earle, Morris D. Earle, & James Earle, partners, trading under firm-name of Earle & Co., by their attorney, and sued out of the clerk's office of the county court of Alexandria County a writ of summons against James H. McVeigh and Edgar T. McVeigh, partners, trading under the firm-name of McVeigh & Son, of a plea of debt, which summons, with the return thereon, is in the words and figures following:

The commonwealth of Virginia to the crier of Alexandria County, greeting:

We command you to summons James H. McVeigh and Edgar T. McVeigh, partners, trading under the firm-name of J. H. McVeigh & Son, if they be found within your bail'wick, to appear at the clerk's office of our county court for our said county of Alexandria, at the rules to be holden for said court on the first Monday in March next, to answer Alexander M. Earle, Morris D. Earle, & James Earle, partners, trading under the firm-name of Earle & Co. of a plea of debt, $8,414.34, dam-

age $1,000, and have then there this writ. Witness Jeff'son Tacey, clerk of our said county court, at the court-house aforesaid, the 12th day of February, 1862, and in the 86th year of the commonwealth.

JEFFERSON TACEY, *Clerk.*

Executed the within summons, February 24, 1862, on James
22 H. McVeigh, by leaving a copy thereof posted at the front door of his usual place of abode, neither he nor his wife, nor any white person who is a member of his family, and above the age of sixteen years, being found at his said usual place of abode. Edgar T. McVeigh is a non-resident of Virginia.

February 24, 1862.

T. J. EDELEN,
Crier Alex'a County Court.

And at another day, to wit, at rules held for the county of Alexandria in the clerk's office of the county court of said county on the 5th day of March, in the year aforesaid, came the plaintiffs, by their attorney, and filed their declaration against the defendants, which declaration is in these words:

In the county court of Alexandria County, Va.

ALEXANDRIA COUNTY, *to wit:*

Alexander M. Earle, Morris D. Earle, and James Earle, partners in trade under the firm-name of Earle & Co., complain of James H. McVeigh and Edgar T. McVeigh, partners trading under the firm-name of J. H. McVeigh & Son, who have been duly summoned to answer of a plea, that they render to the plaintiffs the sum of eight thousand four hundred and fourteen $\frac{34}{100}$ dollars ($8,414.34) which they owe to and unjustly detain from the said plaintiffs, and thereupon the plaintiffs say that heretofore, to wit, on the 18th day of December, 1860, at the
23 said county, the said defendants, partners as aforesaid, made their certain note in writing and subscribed their firm-name thereto, by which said note, bearing date on the day and year aforesaid, they then and there promised to pay, five months after date, to the order of the plaintiffs, by their firm-name aforesaid, six hundred twenty-five $\frac{6}{100}$ dollars, ($625.06,) at City Bank, New York, value received; which said note they then and there delivered to the plaintiffs; and the said plaintiffs further say that heretofore, to wit, on the 28th day of January, 1861, at said county, the said defendants, partners as aforesaid, made their certain other note in writing and subscribed their said firm-name thereto, by which said note, bearing date on the day and year last aforesaid, they then and there promised to pay, ninety days after date, to the order of the plaintiffs, by their firm-name aforesaid, fifteen hundred dollars. ($1,500) at City Bank, New York, value received, which said note they then and there delivered to the said plaintiffs.

And the said plaintiffs further say that heretofore, to wit, on the 28th day of February, 1861, at the said county, the said defendants, partners as aforesaid, made their certain other note in writing and subscribed their firm-name thereto, by which said note, bearing date on the day & year last aforesaid, they then and there promised
24 to pay, ninety days after date, to the order of the plaintiffs, by their firm-name aforesaid, twenty-two hundred & ten $\frac{83}{100}$ dollars, ($2,210.83,) at the City Bank, New York, value received, which said note they then and there delivered to the plaintiffs.

And the said plaintiffs further say, that heretofore, to wit, on the 5th day of March, 1861, at said county, the said defendants, partners aforesaid, made their certain other note in writing and subscribed their firm-name thereto, by which said note, bearing date on the day and year last aforesaid, they then and there promised to pay, four months after date, to the order of the plaintiff, by their firm-name aforesaid, nine hundred twenty-four $\frac{96}{100}$ dollars, ($924.90) at City Bank, New York, value received, which said note they then and there delivered to the plaintiffs.

And the said plaintiffs further say that heretofore, to wit, on the 5th day of March, 1861, at said county, the said defendants, partners as aforesaid, made their certain other note in writing and subscribed their firm-name thereto, by which said note, bearing date on the day and year last aforesaid, they then and there promised to pay, five months after date, to the order of the plaintiffs, by their firm-name aforesaid, nine hundred twenty-nine $\frac{96}{100}$ dollars, ($929.96,) at City Bank,
25 New York, value received, which said note they then and there delivered to the plaintiffs.

And the said plaintiffs further say that heretofore, to wit, on the 28th day of March, 1861, at the county aforesaid, the said defendants, partners as aforesaid, made their certain other note in writing and subscribed their firm-name thereto, by which said note, bearing date on the day & year last aforesaid, they then and there promised to pay, ninety days after date, to the order of the plaintiffs, by their firm-name aforesaid, twenty-two hundred ninety-three $\frac{59}{100}$ dollars at the City Bank, New York, value received, which said note they then and there delivered to the plaintiffs, which said monies, respectively specified, amount together to, and make up the sum of, eight thousand four hundred and fourteen $\frac{34}{100}$ dollars, ($8,414.34,) above demanded.

And the plaintiffs aver, that although the said sum of eight thousand & fourteen $\frac{34}{100}$ dollars ($8,414.34) hath been long since due and payable, according to the tenor and effect of the said notes, respectively; and although the said defendants have been often requested to pay the same, yet the said defendants have not, nor hath either of them, paid the whole or any part of said monies, but so to do they have, & each of them hath, always hitherto neglected & refused, and they do, and each of them doth, still refuse, to the damage of the plaintiffs $1,000, and therefore they bring suit, &c.

26 S. FERGUSON BEACH,
Att. for Plaintiffs.

Whereupon the defendant James H. McVeigh, being summoned and not appearing, on motion of the plaintiffs, by their attorney, it is ordered that judgement be entered for the plaintiffs against the defendant James H. McVeigh, for debt & interest in the declaration mentioned, unless the said defendant should appear and plead to issue at the then next rules, and this case abates as to the defendant Edgar T. McVeigh by the crier's return on the writ of summons.

At which day, to wit, at rules held in the clerk's office of the county court of Alexandria County, on the 31st day of March in the year aforesaid, the defendant James H. McVeigh still failing to appear, on the motion of the plaintiff, by their attorney, it was ordered that the last order made against him in this cause be confirmed.

And now, at this day, to wit, at a county court continued and held for the county of Alexandria, at the court-house thereof, on the same

day and year first herein mentioned, to wit, on Thursday, the 10th day of April, in the year 1862:

The judgement obtained at the rules not having been set aside, and the plaintiff being now entitled to a final judgment, it is therefore considered that the plaintiffs recover against the defendant James
27 H. McVeigh eight thousand four hundred and fourteen dollars and thirty-four cents, the debts in the declaration mentioned, with interest on $625.06, a part thereof, after the rate of six per centum per annum from the 21st day of May, 1861; on $1,500, another part thereof, from the 1st day of May, 1861; on $2,210.83, another part thereof, from 1st day of June, 1861; on $924.90, another part thereof, from 8th day of July, 1861; on $929.96, another part thereof, from 8th day of August, 1861; and on $2,223.59, the balance thereof, from the 29th day of June, 1861, till payment, an' the costs by them about their suit in this behalf expended. And the said defendant in mercy, &c.

The following are copies of the notes upon which this action was founded:

$625.06.] ALEX'A, VA., *Dec.* 18, 1860.

Five months after date we promise to pay to the order of Earle & Co. six hundred twenty-five $\frac{6}{100}$ dollars, at City Bank, New York, value received.

J. H. McVEIGH & SON.

No. 1062. Due May 21.

(Endorsement on back:) EARLE & Co.

$1,500.00.] ALEXANDRIA, 28 *Jan.*, 1861.

Ninety days after date we promise to pay to the order of Earle & Co. fifteen hundred dollars, at City Bank, New York, value received.

J. H. McVEIGH & SON.

No. 1081. Due May 1, 1861.

(Endorsement on back:) EARLE & Co.

28 $2,210.83]. ALEXANDRIA, 28*th Feb'y*, 1861.

Ninety days after date we promise to pay to the order of Earle & Co. twenty-two hundred & ten $\frac{83}{100}$ dollars, at City Bank, New York, value received.

J. H. McVEIGH & SON.

No. 1118. Due June 1.

(Endorsement on back:) EARLE & Co.

$924.90.] ALEX'A, VA., *March 5th*, 1861.

Four months after date we promise to pay to the order of Earle & Co. nine hundred twenty-four $\frac{90}{100}$ dollars, at City Bank, New York, value received.

J. H. McVEIGH & SON.

No. 1169. Due July 8.

$929.96.] ALEX'A, VA., *March* 5, 1861.

Five months after date we promise to pay to the order of Earle & Co. nine hundred twenty-nine $\frac{96}{100}$ dollars, at City Bank, New York, value received.

J. H. McVEIGH & SON.

No. 1170. Due Aug. 8.

$2,223.59.] ALEX'A VA., 28 *March*, 1861.

Ninety days after date we promise to pay to the order of Earle & Co. twenty-two hundred twenty-three $\frac{59}{100}$ dollars, at City Bank, New York, value received.

J. H. McVEIGH & SON.

29 No. 1155. Due June 29.

(Endorsement on back:) EARLE & Co.

A copy of the record. Teste:

GEORGE C. SEATON, *Clk.*

Exhibit No. 3 with bill.

3d exhibit with bill.

VIRGINIA:

In the circuit court of Alexandria County.

ALEXANDER M. EARLE, MORRIS D. EARLE, and James Earle, partners, trading under the firm-name of Earle & Co., plaintiffs, *against* JAMES H. McVEIGH, DEFENDANT. } In chancery.

Among the records, files, and judicial proceedings of the county and circuit courts of the county of Alexandria, in a chancery cause by the above style, are the following, to wit:

Be it remembered that on the 24th day of September, in the year one thousand eight hundred and sixty-four, came Alexander M. Earle, Morris D. Earle, and James Earle, partners, trading under the firm-name of Earle & Co., by S. Ferguson Beach, esq., their attorney, and sued out of the clerk's office of the county court of Alexandria County a sub-
30 pœna in chancery against James H. McVeigh, which subpœna in chancery, with the return thereon, is in the words and figures following:

The commonwealth of Virginia to the sheriff of Alexandria County, greeting:

We command you to summon James H. McVeigh to appear at the clerk's office of our county court of Alexandria, at the rules to be holden for said court on the fourth Monday in September, 1864, to answer a bill exhibited against him in the said court, by Alexander M. Earle, Morris D. Earle, and James Earle, partners, trading under the firm-name of Earle & Co.; and unless he shall answer said bill according to law, the court will take the same for confessed and decree accordingly, and this he shall in no wise omit under the penalty of £100; and have then there this writ.

Witness Jefferson Lacey, clerk of our said county court, at the court-house aforesaid, the 24th day of September, 1864, and in the 89th year of the commonwealth.

JEFFERSON LACEY, *Clerk.*

[Stamp, fifty cents.]

31 Endorsement on back of subpœna as follows:

Not found.

S. N. GARWOOD, *Shff.*

SEP. 26, 1864.

And at another day, to wit, at rules held for the county court of Alexandria County on the 26th day of September, in the year aforesaid, came the plaintiffs, by their attorney, and filed their bill in chancery against the defendant; which said bill is in the words following:

To the county court of Alexandria County, Virginia:

Alexander M. Earle, Morris D. Earle, and James Earle, partners, trading under the firm-name of Earle & Co., of the city of New York, plaintiffs, exhibit this their bill of complaint against James H. McVeigh, of the city of Alexandria, Virginia, defendant.

The plaintiffs state and charge as follows: That at the April term, 1862, of the said court, they recovered a judgment against the said defendant for eight thousand four hundred and fourteen $\frac{3}{10}$ dollars, ($8,414.34,) principal money, with interest till paid on six hundred and twenty-five $\frac{06}{100}$ dollars, ($625.06,) part thereof from May 21st, 1861; and on fifteen hundred dollars, ($1,500,) other part thereof, from May
32 1st, 1861; and on twenty-one hundred and ten $\frac{83}{100}$ dollars, ($2,110.83,) other part thereof, from June 1st, 1861; and on nine hundred and twenty-four $\frac{90}{100}$ dollars, ($924.90,) other part thereof, from July 8th, 1861; and on nine hundred and twenty-nine $\frac{90}{100}$ dollars, ($929.90,) other part thereof, from August 8, 1861; and on twenty-two hundred and twenty-three $\frac{39}{100}$ dollars, ($2,223.39,) the residue thereof, from June 29, 1861, with seven $\frac{01}{100}$ dollars ($7.01) costs; all of which will fully appear on reference to the record of this suit on file in the said court.

That the said judgment remains in full force, unreversed and wholly unsatisfied, no portion whatever of it having been paid.

That there are no personal assets of the said defendant, and that process of execution against his goods and chattels has been returned "no property."

That the said defendant is seized of real estate in the said city of Alexandria, on which the said judgment of the plaintiffs is a lien, and that the rents and profits of the same would be insufficient to satisfy said judgment within five years.

33 That, besides the judgment aforesaid, the said Alexander M. Earle and Morris D. Earle, as partners, under the same firm-name of Earle & Co., recovered, in a suit instituted by them, a judgement against the same defendant, at the said April term, 1862, for three thousand and thirty-five $\frac{49}{100}$ dollars, ($3,035.49,) with interest and costs, and that other parties at the same term also recovered judgements against said defendants for large amounts.

That the said defendant is reported to be in sympathy with the so-called Confederate States; that he has voluntarily left his usual place of abode, the said city of Alexandria, and has gone out of the reach of personal service of civil process, issueing from the county of Alexandria, in which he last resided, and has so remained for more than ninety days after having so left, and still so remains.

The plaintiffs pray that the lien of their said judgement may be enforced by a sale of so much of the real estate of the said defendant as may be required for the satisfaction of the judgment.

34 To this end the plaintiffs pray that the said James H. McVeigh may be required to answer upon oath all the allegations of this bill; that one of the commissioners of this court, or a special commissioner, may be directed to enquire and report the real estate of which the said James H. McVeigh is seized and its annual and fee-simple value; also the amount and nature of the various incumbrances upon it and

their priorities, together with such other matters, respectively, the same as may be pertinent; and that thereupon the court will order a sale as above prayed, and will decree to the plaintiffs such general relief as may be consistent with equity and the circumstances of their case may require; that all needful process may issue, &c., &c.

EARLE & CO.,
By ALEXANDER M. EARLE.

CITY AND COUNTY OF NEW YORK,
State of New York, to wit:

Alexander M. Earle, one of the firm of Earle & Co., in the foregoing bill of complaint mentioned, and whose name is subscribed
35 thereto, personally appears this 24th day of September, 1864, before me, Edwin F. Corey, a notary public in and for the city, county, and State aforesaid, and, as such, authorized to administer oaths and affirmations generally, and makes oath, in due form of law, that the matters and things stated and charged in said bill he verily believes to be true.

Witness my hand and official seal.
[SEAL.]

EDWIN F. COREY,
Notary Public.

[Rev'e stamp, 5 c.]

The defendant not having entered his appearance and given security according to the act of assembly and the rules of this court, and it appearing by satisfactory evidence that the said defendant is reputed to be in sympathy with the so-called Confederate States; that he has voluntarily left his usual place of abode, the said city of Alexandria, and has gone out of the reach of personal service of civil process issuing from the county of Alexandria, in which he last resided, and has so remained for more than ninety days after having so left, and still so remains, it is ordered that the said defendant appear here within one month after due publication of this order, and do what is necessary to protect his interest in this suit, and that a copy of this
36 order be forthwith inserted in the Virginia State Journal, a newspaper published in the city of Alexandria, once a week for four successive weeks, and posted at the front door of the court-house of this county.

Proof of publication.

STATE OF VIRGINIA,
County of Alexandria, ss:

I, B. W. Gillis, one of the publishers and proprietors of the Virginia State Journal, a newspaper published in the city of Alexandria, Va., do certify that the annexed, in the case of Alexander M. Earle et al., was published in said newspaper once a week for four consecutive weeks, commencing on the 29th day of September, 1864.

B. W. GILLIS,
One of the Publishers and Proprietors.

[Stamp, 5 cents.]

And at another day, to wit, at rules held in the clerk's office of Alexandria County court, on the 5th day of December, in the year aforesaid:

It appearing to the court that the order of publication awarded against the defendant in this cause has been duly executed, and the said

defendant still failing to appear and answer, on motion of the
37 plaintiff, it is ordered that their bill be taken for confessed, and
the court will decree the matter thereof accordingly, unless the said defendant shall appear and answer the plaintiff's bill at the then next rules.

At which day, to wit, at rules held for the county of Alexandria in the clerk's office of the county court of said county, on the 26th day of December, in the year aforesaid, the said defendant still failing to appear and answer, it is ordered that the plaintiff's bill be taken for confessed, and set down for hearing on the plaintiff's motion.

And at another day, to wit, at a county court continued and held for Alexandria County, at the court-house of said county, on Wednesday, the 11th day of January, 1865:

This cause which has been regularly matured and set for a hearing upon order of publication duly executed, came on to be heard this 11th day of January, 1865, upon the complainant's bill, which has been regularly taken for confessed, and other papers, and was argued by counsel; upon consideration whereof the court doth order, adjudge, and decree
that Jefferson Tacy be, and he is hereby, appointed a special
38 commissioner to ascertain the real estate of which the defendant James H. McVeigh seised, and its annual and fee-simple value; also the nature and amount of the incumbrances to which it is subject and their priorities, and report the same to the court; and the case is continued for further proceedings to be had therein.

And at another day, to wit, at a county court held for the county of Alexandria, at the court-house thereof, on Monday, the 1st day of May, 1865:

Report of special commissioner, Jefferson Tacy, returned and ordered to be filed, which report and statements therewith returned are in the words and figures following, to wit:

EARLE & Co.
vs. } In chancery.
JAS. H. MCVEIGH.

To the worshipful, the county court of Alexandria County Virginia:

Your commissioner, appointed by a decree of the county court on the
11th day of January, 1865, to ascertain and report the real estate
39 of which the defendant in the above-entitled cause is seized in Alexandria, Va., and its annual and fee-simple value, also the nature and amount of the incumbrances to which it is subject and their priorities, respectfully reports, that the annual value of the said real estate is about $1,720, and that the fee-simple value of the same is $21,000, as is exhibited by the paper accompanying this report, marked "A." The only incumbrance to which the real estate is subject are in the nature of judgements obtained in the county court of the county aforesaid, in certain actions at law instituted by various parties plaintiffs against the said defendant, in which there is no priority, having all been obtained at one and the same term of said court. The aggregate amount of the said judgements is twenty-two thousand three hundred and eleven $\frac{19}{100}$ dollars ($22,311.19) principal-money, said judgements bearing interest from different dates, as will be found by reference to the paper marked "B," with this report, and which also shows the amount of costs in the aggregate to be sixty-one $\frac{78}{100}$, ($61.78,) making a total of principal

and costs, aside from interest, of twenty-two thousand three hundred and seventy-two $\frac{97}{100}$ dollars, ($22,372.97.)

40 Given under my hand as special commissioner of the said court, in the suit aforesaid, on the fourth day of March, 1865.

JEFFERSON TACEY.

Time employed by the commissioner in searching the land-records in ascertaining and reporting incumbrances, five hours.

Com's fees, $5.00.

JEFF'N TACEY,
Spe'l Com'r.

I certify that ten days have elapsed since the within report was made, and the same has been attainable for inspection by parties interested therein.

JEFF'N TACEY,
Spec'l Com'r.

STATEMENT A.

Statement showing the annual and fee-simple value of real estate of which James H. McVeigh is seized in Alexandria, Va.

		Annual value.	Fee-simple value.
No. 1..	House & lot northeast corner of Cameron & St. Asaph sts	$800 00	$12,000 00
" 2..	" " north side Cameron, bet. Pitt & St. Asaph sts	500 00	5,000 00
" 3..	One undivided one-half of three houses & lots, northwest corner Cameron & Alfred streets, value $3,000	120 00	1,500 00
" 4..	½ of lot west side of Union, bet. Queen & Cameron sts., val'e 2,500	100 00	833 33⅓
" 5..	½ of lot west side of Union, bet. Queen & Princess sts., val'e 2,500	100 00	833 33⅓
" 6..	½ of lot west side of Union, & south of Princess sts., val'e 2,500	100 00	833 33⅓
		$1,720 00	$21,000 00

41 STATEMENT B.

A statement of judgments against James H. McVeigh obtained in the county court of Alexandria County, Va., which are not satisfied on the 6th day of March, 1865.

EARLE & CO.
vs.
JAS. H. MCVEIGH. } Jud. April 9th, 1862.

For $3,035.49; int. on $839.28, part thereof, from April 19th, 1861, and on $2,196.21, the residue thereof, from May 1st, 1861, till paid. Damages in case and $8.71 costs.

SAME
vs.
SAME. } Jud. April term, 1862.

For $8,414.34; int on $625.06, part thereof, from May 21st, 1861; and on $1,500, another part thereof, from May 1st, 1861; & on $2,210.83, another part thereof, from June 1st, 1861; and on $924.90, another part thereof, from July 8th, 1861; & on $929.96, another part thereof, from

August 8th, 1861; & on $2,223.39, the residue thereof, from June 29th, 1861, till paid. Debt and $7.01 costs.

C. H. GRANT & Co.
vs.
SAME. } Jud. Apr. 9th, 1862.

For $569.46; int. on $255.00, part thereof, from April 24th, 1861; and on $314.46, the residue thereof, from Sept. 13th, 1861; till paid. Damages in case and $8.71 costs.

42 STURGES, BENNET & Co.
vs.
SAME. } Jud. April 9th, 1862.

For $3,536; int. from June 25th, 1861, till paid. Damages in case and $8.71 costs.

M. W. HAMILTON & Co.
vs.
SAME. } Jud. April term, 1862.

For $309.44; int. from Aug. 9th, 1861, till paid. Debt and $7.01 costs.

SHERMAN, TALLMAN & Co.,
vs.
SAME. } Jud. April term, 1862.

For $385.27; int. from October 1st, 1861, till paid. Debt and $7.01 costs.

WOODS, BRIDGES & Co.
vs.
SAME. } Jud. April term, 1862.

For $2,460.86; on $3.75, part thereof, from April1 8th, 1861; and on 634.04, another part thereof, from July 24, 1861; & on $1,025.55, another part thereof, from Sep. 24, 1861; & on 792.52, the residue thereof, from Oct. 4, 1861, till paid. Debt and $7.01 costs.

HENRY PRUYN
vs.
JAS. H. MCVEIGH, & WM. N. MCVEIGH. } Jud. April term, 1862.

For $3,900; int. on $900.00, part thereof, from March 1, 1861;
43 and on $1,000.00, another part thereof, from March 20th, 1861; & on $1,000.00, another part thereof, from April 1st, 1861; & on $1,000, the residue thereof, from April 11th, 1861, till paid. Debt and $7.61 costs, subject to a credit of $1,300.00. March 5th, 1861.

Aggregate amount of principal, $22,311.19.
Aggregate amount of costs, $61.78.

And at another day, to wit, at a county court continued and held for Alexandria County, at the court-house of said county, on Tuesday, the 6th day of June, 1865:

This cause came on again to be heard this 6th day of June, 1865,

upon the papers formerly read and the report of Special Commissioner Tacey, filed on the 4th day of May last, to which report there are no exceptions, and was argued by counsel. Upon consideration whereof, the court doth order, adjudge, and decree, that the said commissioner's report be, and the same is in all things, confirmed. And it appearing to the court that the rents and profits of the real estate of the defendant McVeigh will not suffice to pay the plaintiff's judgments in the bill mentioned, and the other judgements mentioned in said report, all of which stand upon the same footing, within five years, the court doth thereupon further order, adjudge, and decree, that so much of the real
44 estate of the said defendant as may be requisite for the purpose *to* be sold at public auction, and the proceeds applied to the payment of said judgements. The court doth appoint S. Ferguson Beach a commissioner to make said sales, which are to be upon the following terms: Twenty per centum of the purchase-money to be paid in cash; the residue in three equal installments, at six, twelve, and eighteen months from sale; the deferred payments to be secured by the bonds of the purchaser, with good personal security, bearing interest from date; the title to the property to be retained till the purchase-money is fully paid, and the property to be sold at the risk of the purchaser, on his failing to pay any one of the deferred installments or to comply with the terms of sale. The said commissioner of sale, before making a sale, is to execute his bond, with surety, before the clerk of this court, to be approved by him, in the penalty of three thousand dollars, conditioned for the faithful discharge of his duties under the decree, and he is to give notice of the time and place of sale by advertisements for not less than thirty days, in one or more newspapers published at or near the city of Alexandria, Va., and the said commissioner of sale will report his proceedings to this court at the next term, to which the cause is continued.

And at another day, to wit, at a county court continued and held for Alexandria County, at the court-house of said county, on Friday, the 8th day of June, 1866, to which time this cause was regularly continued at each term of the court:

45 This cause having remained pending in this court more than a year without being determined, upon the motion of the plaintiffs' , it is ordered that the same be removed to the circuit court of this county.

And at another day, to wit, at a circuit court held for the county of Alexandria, November term, 1866, this cause, which was removed from the county court of Alexandria County, is ordered to be docketed in this court.

And at another day, to wit, at a circuit court continued and held for the county of Alexandria, at the court-house thereof, on the 29th day of November, in the year 1870, to which time this cause was regularly continued at each term of the court, this cause was continued.

A copy of the record. Teste.

GEORGE C. SEATON, *Clk.*

Exhibit J. H. M., No. 1, with bill.

Exhibit J. H. M., No. 1, with bill.

By L. D. HARRISON, *Auctioneer.*

Commissioner's sale of valuable real estate.

Pursuant to a decree of the county court of Alexandria County, Va., rendered at its June term, 1865, in the suit of Earle & Co., plaintiffs, vs. McVeigh et al., defendants, now pending in the circuit court of said county, the undersigned, as commissioner thereby appointed, will sell at public auction, in front of the mayor's office in the city of Alexandria, Va., on Saturday, the 13th day of May, 1871, at 12.30 p. m.—

1. Three-story brick dwelling and premises, late the residence
46 of Mr. James H. McVeigh, at the northeast intersection of Cameron and St. Asaph streets in said city, having a front of about 90 feet 5 inches on Cameron, and a depth of about 176 feet 7 inches.

2. Two-story brick dwelling and premises next adjoining the property above described, fronting about 25 feet on Cameron.

3. Undivided moiety of three houses and premises, situated at the northwest intersection of Cameron and Alfred streets, in said city, being designated respectively as Nos. 183, 185, 187, Cameron street.

4. Undivided third part of two adjacent lots on the west side of Union street, between Queen and Princess streets in said city; the first begin'ing at northeast corner of bake-house devised by Richard and Thomas Conway, and running thence north on Union street 65 feet; thence west, parallel to Queen street, 140 feet, more or less, to Brockett's Alley; thence south with said alley 65 feet; thence east 140 feet, more or less, to the begin'ing. The second begin'ing at the northeast corner of the above-described lot, and extending north on Union street 23 feet 6 inches, and having a depth of 84 feet.

5. Undivided third part of lot on west side of Union, between Queen and Cameron streets, in said city, begin'ing at the south line of a 20-feet alley, Thompson's Alley, through middle of square, and extending thence south on Union street 106 feet 7 inches to the line formerly of Thos. Herbert; thence westwardly with that line 150 feet to the middle of the square; thence north, parallel to Union street, 106 feet 7 inches; thence east on the alley to the begin'ing.

47 TERMS.—Twenty per cent. of purchase-money cash, residue in three equal instalments at 6, 12, and 18 months from sale, with interest. Purchasers to give bonds for purchase-money with personal security, title to be retained till paid, and property to be resold at risk of purchaser, upon failure of purchaser to comply with terms of sale or to pay deferred instalments of purchase-money.

Apr. 12.

S. FERGUSON BEACH,
Commissioner.

The above sale is postponed until Saturday, June 17, 1871, at 12 o'clock m.

MAY 12.

On the 10th day of June, 1871, the following bond was executed, to wit:

Injunction-bond.

INJUNCTION-BOND.

Know all men by these presents that we, James H. McVeigh and C. W. Wattles, are held and firmly bound unto Morris D. Earle and James Earle, citizens of the State of New York, partners trading under the firm-name of Earle & Co., in the just and full sum of five hundred dollars, for the payment whereof well and truly to be made we bind ourselves, our heirs, executors, and administrators jointly and severally, firmly by these presents, sealed with our seals and dated this 10th day of June, 1871.

The condition of the above obligation is such that whereas James H. McVeigh hath obtained from Hon. James Keith, judge of the 11th circuit of Virginia, an injunction, until the order of the circuit court of Alexandria County to the contrary, enjoining and restraining the
48 said Earle & Co., and S. F. Beach, commissioner, from any proceedings on said judgements obtained by the said Earle & Co. against the said James H. McVeigh at the April term, 1862, of the county court for Alexandria County, one for $8,414.34, int. on $625.06 from May 21st, 1861; on $1,500 from May 1st, 1861; on $2,110.83 from June 1st, 1861; on $924.90 from July 8th, 1861; on $929.96 from August 8th, 1861, & on $2,223.39 from June 29, 1861, till paid, and $7.01 costs, & the other for $3,035.49, with interest and costs, and from any sale or proceeding under a decree of said county court at its June term, 1865, in chancery cause Earle & Co. vs. James H. McVeigh. Now, if the said James H. McVeigh shall well and truly pay and satisfy all such costs and damages as shall be awarded against him or sanctioned by any person in consequence of the injunction aforesaid, in case the same shall be dissolved, then the obligation is to be void, or else to remain in full force and virtue.

JAMES H. McVEIGH. [SEAL.]
C. W. WATTLES. [SEAL.]

VIRGINIA,

Alexandria County, to wit:

This day C. W. Wattles, the security in the above bond, made oath before me that his estate, after the payment of all his just debts, is
49 worth five hundred dollars, the penalty of said bond. Given under my hand this 10th day of June, 1871.

GEO. C. SEATON, *Clerk.*

And thereupon a subpœna and injunction was issued, in the following words and figures, to wit:

Subpa. chy. & injn.

The Commonwealth of Virginia to the sheriff of Alexandria County, greeting:

We command you to summon Alexander Earle, Morris D. Earle, and James Earle, partners, trading under the firm-name of Earle & Co., and S. Ferguson Beach, to appear at the clerk's office of our circuit court of Alexandria, at the rules to be holden for said court *of* the first Monday in July, 1871, to answer a bill exhibited against them in the said court by James H. McVeigh, and unless they shall answer said bill according to law, the court *the court* will take the same for confessed and decree accordingly, and this they shall in no wise omit under the penalty of £100, and have then and there this writ.

Witness Geo. C. Seaton, clerk of our said circuit court, at the court-house aforesaid, the 10th day of June, 1871, and in the 95th year of the Commonwealth.

GEO. C. SEATON, *Clerk.*

50 To enjoin and restrain Alexander M. Earle, Morris D. Earle, and James Earle, parties trading under the firm-name of Earle & Co., and S. Ferguson Beach, commissioner, from any proceedings on two judgments obtained by the said Earle & Co. against James H. McVeigh at the April term, 1865, of the county court of Alexandria County, one for $8,414.34, interest on $625.06 from May 21, 1861; on $1,500.00 from May 1st, 1861; on $2,110.83 from June 1st, 1861; on $924.90 from July 8th, 1861; on $929.96 from August 8, 1861, and on $2,223.39 from June 29th, 1861, till paid, and $7.01 costs; and the other for $3,035.49, with interest & cost, and from any sale or proceeding under a decree of the said county court at its June term, 1865, chancery cause Earle & Co. against James H. McVeigh, injunction having been awarded by the Hon. James Keith, judge of the 11th circuit of Virginia, and bond having been given with good security in the penalty of five hundred dollars, conditioned as the law directs.

Teste:

GEO. C. SEATON, *Clerk.*

Service of the within accepted June 13, 1871.

S. F. BEACH,
Solicitor for Defendants.

51 And another day, to wit, at rules, held in the clerk's office of the circuit court of Alexandria County, on the first Monday in July, in the year one thousand eight hundred and seventy-one, came the defendants Alexander M. Earle, Morris D. Earle, and James Earle, by their attorney, and filed their answer to the plaintiff's bill, which said answer is in the words and figures following, to wit:

Answer of defts.

Circuit court of Alexandria County, Virginia.

JAMES H. McVEIGH, PLAINTIFF, *vs.* EARLE & CO. ET AL., DEFENDANTS. } In chancery.

The joint and several answer of Alexander M. Earle, Morris D. Earle, and James Earle to the bill of complaint exhibited against them and others in the above-entitled cause.

Respondents, reserving all and every right of exception to said bill, in answer to the same say:

It is true that at the April term, 1862, of the county court of Alexandria County, Virginia, the respondents being then, as they have ever since been and now are, citizens of the State of New York, recovered against the plaintiff, who was then and for many years previously
52 had been a citizen and resident of said county, the judgements enumerated in the bill.

The return upon the process in the actions in which said judgements were obtained, is correctly set forth in said bill.

The said return was and is true in every particular, and was and is in no respect false or fraudulent, and the process was in fact executed in exact conformity with the return.

Respondents believe it to be true that the plaintiff's family left Alexandria on a visit to Loudoun County, Virginia, in the spring of 1861, prior to the occupation of the city of Alexandria by the national military forces at the outbreak of the rebellion, and that shortly after said occupation, the plaintiff joined his family in Loudoun, leaving no white member of his family at home.

Respondent also believes it to be true that the plaintiff and his family afterwards, during the years of '61 & '62, moved about from place to place, as stated in the bill, and that they remained within the confederate lines down to the termination of the rebellion in the spring of '65.

53 These facts were not of course all known to your respondents at the time of the rendition of said judgments, as they had not all at that time transpired. The actions in which the judgements were rendered were commenced in February, 1862, and the judgements themselves were obtained in the April ensuing.

What may have been known in these particulars to the officer executing the process in said actions, respondents are unable to state. It is not true that at the time of the service of said process the plaintiff's residence in Alexandria was or had been occupied by the military forces of the United States for any purpose; on the contrary, it was then remaining as it had all the time previously remained, precisely in the condition in which the plaintiff left it—in the undisturbed charge of Robert Crupper, his manager and agent—ready for the plaintiff's occupancy at the moment of his return; and up to the commencement of said actions and the rendition of said judgements, there never existed at any moment either any legal obstacle to his return, or any practical obstacle, which was not the result of his own voluntary action.

Respondents knew at the rendition of said judgements, and previously, that the plaintiff, when going on his visit to Loudon in the spring of '61, as aforesaid, had left behind him Robert Crupper as his manager and agent.

The plaintiff for many years prior and up to the outbreak of the rebellion resided and carried on the business of a wholesale grocer in the city of Alexandria.

54 In this business Robert Crupper was his confidential clerk and manager, in which relation he was well known to the respondents and the business public of Alexandria.

Respondents themselves were wholesale grocers in the city of New York, and the notes on which said judgements were founded were notes given for goods sold to the plaintiff in the course of that business.

These notes, as will be shown by the transcripts of the records of said judgments, were given in the early part of 1861 and thereabouts, and matured in the spring and summer following, some of them before the time of the plaintiff's leaving Alexandria.

In the aggregate they constituted a debt of nearly $12,000 at the time of their maturity; and, having fallen due without any provision made or promised for paying them, respondents were solicitous on the subject, and visited Alexandria to look personally after this and other debts. They found Robert Crupper there, and learned from him that the plaintiff had gone, as hereinbefore stated. They discussed with Mr. Crupper the condition of their debt, (which was already well known to

him,) and the steps best to be taken to secure it, proper regard being had to the interests of the plaintiff, and the result was "a perfect agreement that the interests of both parties would be best subserved by reducing the debt to a judgement as soon as practicable." The character and amount of respondents' claim was well known to said Crupper, and known to him to be undisputed by the plaintiff.

55 Suits were accordingly brought upon the notes and judgements obtained, as already appears; and, besides the suits and judgements of the respondent, there were at the same time other suits by other creditors of the plaintiff, brought under similar circumstances, and judgements rendered on them for an aggregate of eight or ten thousand dollars.

It was not the purpose of respondents, in obtaining said judgements, to force the immediate payment thereof by a sale of the property of the plaintiff, or to accomplish anything more for the time than to create a lien for their debts upon the plaintiff's real estate in Alexandria; the same described in the advertisement exhibited with the bill; which, so far as respondents then knew, was the only property to which they could look either for payment or security, excepting the plaintiff's household furniture and effects, which they did not attempt or propose to disturb.

Respondents, in what they did, had regard, of course, chiefly to their own interests in this business; but they intended not to be, and they were not, unmindful of the interests of the plaintiff. They anticipated that the property, if the plaintiff remained absent from Alexandria, might be seized and confiscated by the Government, becoming thereby lost to the respondents and doubly lost to the plaintiff. And, true, it happened that, not very long after the rendition of the judge-

56 ments, the property actually was so seized and libelled for confiscation, and the proceedings for that purpose were abandoned only upon its being made to appear that respondents and other creditors had acquired a lien upon it by their judgments to an amount largely exceeding its value, leaving nothing to the plaintiff beyond the bare legal title.

Respondents fully contemplated that the plaintiff would soon return to his home and provide for their claims to their satisfaction, and they did not anticipate an actual necessity of enforcing their judgements.

After obtaining their judgements, and docketing them, they waited nearly three years before taking any steps to enforce them. In the meanwhile the plaintiff's household furniture had been seized and confiscated; the military had taken possession of the real estate and were occupying it. No tidings came from the plaintiff respecting the payment of their claims, and the respondents thereupon instituted, in 1864, the proceedings in the bill mentioned, for the purpose of subjecting

57 the real estate to the satisfaction of their own and the other judgements. And in instituting this proceeding, it was as far as ever from the purpose of the respondents and other judgement-creditors who co-operated with them to derive any advantage whatever from the plaintiff's absence; nor was it with a view even to expose the property to sale, so long as the least prospect remained that provision would otherwise be made for their satisfaction. But this prospect was daily growing fainter; the property was seriously depreciating in value; taxes were accumulating upon it; and a considerable interval would elapse between the commencement of proceedings and the decree for a sale.

Proceedings for a sale were accordingly instituted, the course and result of which are correctly stated in the plaintiff's bill, and

58 respondents are advised that the jurisdiction of the court to entertain said proceedings; as well as its jurisdiction to render the said judgements, was undoubted, and that both judgements and decree are to every intent and purpose unimpeachably operative and valid.

After the confederate surrender, and in the early part of '65, about the date of said decree of sale, the plaintiff returned home to Alexandria, and there learned, if he had not before learned, the fact and full particulars of said judgements.

Respondents, too, had always understood & believed that the plaintiff then learned that the property was liable to sale for the satisfaction of said judgements under proper proceedings instituted for that purpose.

Certain it is that Robert Crupper, his manager and agent, was perfectly cognizant of said proceedings from the beginning, and that
59 the plaintiff found him here on his return, able to report fully upon all that had transpired in the premises during his absence.

Moreover, in conversations between the respondents themselves and the plaintiff, shortly after his return, the sale of the property was discussed in such a manner as to imply a knowledge by the plaintiff of the fact that the property was then liable to sale; and respondents, therefore, answering on this point, say that the plaintiff is in error in his statement, that he had no knowledge of said decree until recently before the filing of his bill.

The plaintiff, directly after his return home, sought respondents' counsel in said judgements, and in conversation with him, and subsequently with respondents themselves, volunteered expressions of special gratification at the course pursued by them and the other cred-
60 itors in obtaining said judgements; declared that he justly owed them the money, and would himself have advised the creditors to the very steps which they had taken, and expressed the wish that in the sale of the property regard might be had to his views and suggestions as to the proper time for making it, so as to prevent any avoidable sacrifice.

Out of regard to the wishes and situation of the plaintiff in great measure, and in the spirit in which they had all the while acted, respondents and other creditors made no effort to execute their decree of sale; in the hope, too, induced by suggestions of plaintiff, that by some arrangement to be negotiated by him a sale under the decree would be rendered unnecessary; and so the property continued to remain under the control and in the enjoyment of the plaintiff without attempted inte'ferance by the creditors until the advertisement of sale referred to in the bill.

61 Having waited for a long period and no arrangement for any other settlement having been made by the plaintiff, and respondent being advised of no effort on the part of the plaintiff to make one, there being no prospect of a better market, and the rents and profits, as respondents were advised, being appropriated by the plaintiff to his own personal use, without proper provision either for taxes or necessary repairs, the commissioner of sale appointed by said decree was directed to proceed, & did accordingly proceed, to execute the same, as stated in the bill.

Respondents are advised and insist as to said judgements that, if there were any defect in the service of process in the suits in which said judgements were rendered, the remedy for its correction would be at law and not in equity, but respondents are further advised that there
62 is no such defect and no error of any sort in said records, and that, on the facts hereinbefore appearing, the plaintiff has no

equity to impair the effect of said judgements as valid legal judgements, or to restrain the execution of the decree for their satisfaction, according to its terms.

And having thus fully answered, respondents pray that the injunction awarded upon the prayer of the plaintiff may be dissolved, and that they may be hence dismissed with their costs, &c.

EARLE & CO.,
By ALEXANDER M. EARLE.

S. FERGUSON BEACH,
Solicitor for respondents.

STATE OF NEW YORK,
City of New York, to wit:

I, Jas. W. Hale, a notary public in and for said city, do certify that Alexander M. Earle, whose name is signed to the foregoing answer, personally appeared this day before me, and made oath in due form
63 of law that the statements in said answer, so far as made on the knowledge of said respondents, are true, and so far as made on information and belief are believed by him to be true. Given under my hand and seal this 3rd day of July, 1871.

[SEAL.]

JAS. W. HALE,
Public Notary, 69 Wall St.

To which answer the plaintiff replies generally, and the defendant, S. Ferguson Beach, not having entered his appearance & given security according to law, it is ordered that the plaintiff's bill be taken for confessed as to him unless he shall appear and answer the plaintiff's bill at the then next rules.

At which day, to wit, at rules held for the circuit court of Alexandria County, in the clerk's office of said court, on the first Monday in August in the year aforesaid, the defendant S. F. Beach still failing to appear and answer the bill of the plaintiff, the same is taken for confessed as to him.

64 And at another day, to wit, at rules held for the circuit court of Alexandria County, in the clerk's office of said court, on the first Monday in September, in the year aforesaid, this cause was set down for hearing as to all the defendants on the plaintiff's motion.

And at another day, to wit, on the 11th day of November, in the year aforesaid, the following order was received in the clerk's office of the circuit court of Alexandria County, and recorded in the order-book of said court according to law:

McVEIGH
vs.
EARLE & CO. & ALS.

This cause came on to be heard before me, James Keith, judge of the 11th circuit, in chambers, at Warrento', Va., pursuant to notice given by defendants to dissolve injunction awarded on the 9 day of June, 1871, upon the bill & exhibits, the answers of Alexander M. Earle, Morris D. Earle, and James Earle, and the motion of the defendants to dissolve said injunction, and was argued by council; upon consideration whereof it is ordered that the said motion be, and the same is, overruled, and

the clerk of the circuit court of Alexandria County is directed to enter this order upon his order-book. Given under my hand this day of September, 1871.

JAMES KEITH.

65 Clerk's office of Alexandria, circuit court for the county, Nov. 11th, 1871, this order was received in vacation in the said office, and entered in the order-book of said court according to law.

Teste: GEORGE C. SEATON, *Clk.*

Decree removing cause to U. S. court.

And at another day, to wit, at a circuit court continued and held for the county of Alexandria, at the court-house thereof, on Friday, the 17th day of November, in the year 1871:

On the petition of the defendants, Alexander M. Earle, Morris D. Earle, and James Earle, this day filed, praying the removal of the cause, as to them, into the next circuit court of the United States to be held in the eastern district of Virginia, it appearing to the court that they have offered good and sufficient surety for their entering in such court on the first day of its session copies of the process against them, and of all pleadings, depositions, testimony, and other proceedings in the cause affecting or concerning them, this court doth order that the said surety be, and the same is hereby, accepted, and that no further proceedings be had here in the cause as against the said defendants so applying for its removal.

The following are copies of the petition and bond referred to in the above decree, to wit:

In the circuit court of Alexandria County, Va.

66 *Petition.*

JAMES H. MCVEIGH } *vs.* } In chancery.
EARLE & CO. ET AL. }

To the Hon. James Keith, judge of said court:

The petition of Alexander M. Earle, Morris D. Earle, and James Earle respectfully represents as follows:

On the day of June, 1871, a suit entitled as above was instituted in said court by James H. McVeigh, as plaintiff, against your petitioners and S. F. Beach, as defendants, which suit is now pending in said court, and has not yet been finally heard.

The plaintiff in said suit is a citizen of the State of Virginia.

The matter in dispute in said suit exceeds the sum of five hundred dollars exclusive of costs.

Of the defendants in said suit, your petitioners at the time of its institution were, and now are, citizens of the State of New York, and the other defendant was then and is now a citizen of the State of Virginia.

The said suit was instituted and is prosecuted for the purpose of restraining and enjoining your petitioners from enforceing certain judgements rendered in their favor against the complainant by the county court of Alexandria County, Virginia, and it is a suit in which there can be a final determination of the controversy, so far as it concerns

67 these petitioners, without the presence of the other defendants as a party in the cause. All of which will fully and distinctly appear on reference to the record of said suit now on file in said court. Pursuant, therefore, to the provisions of the act of Congress entitled "An act for the removal of causes in certain cases from State courts," approved July 27, 1866, your petitioner' pray for the removal of the said causes, as against them, into the next circuit court of the United States to be held for the eastern district of Virginia, and they offer herewith their bond in the penalty of five hundred dollars, with S. F. Beach as surety, conditioned for their entering in such circuit court of the United States, on the first day of its session, copies of the process against them, and of all pleadings, depositions, testimony, and other proceedings in said cause affecting or concerning them, and they hereby tender the performance of any and every other thing, if other thing be necessary, to satisfy the requirements of the said act of Congress, in order to the removal prayed.

ALEXANDER M. EARLE.
MORRIS D. EARLE.
JAMES EARLE.

68 Subscribed and sworn by Alexander M. Earle before me this 5th day of October, 1871.

[SEAL.] EDWIN T. COREY, JUN.,
Notary Public, County & State of New York.

Bond.

Know all men by these presents that we, Alexander M. Earle, of the city of New York, and S. F. Beach, of the city of Alexandria, Va., are held and firmly bound unto James H. McVeigh, of the said city of Alexandria, Virginia, in the sum of five hundred dollars, to the payment of which we bind ourselves jointly and severally firmly by these presents, sealed with our seals and dated this 17th day of October, 1871.

The condition of the above obligation is such, that if Alexander M. Earle, Morris D. Earle, & James Earle, who have this day filed their petition to the circuit court of Alexandria County, Virginia, asking for the removal of a cause pending therein, wherein the said James H. McVeigh is plaintiff, and themselves and S. F. Beach are defendants, in the next circuit court of the United States for the eastern district of Virginia, shall enter in said circuit court of the United States, on the first day of its session, copies of the process against them, and of all pleadings, depositions, testimony, and other proceedings in said
69 cause affecting or concerning them, then this obligation is to be void; otherwise to remain in full force and virtue.

ALEXANDER M. EARLE. [SEAL.]
S. F. BEACH. [SEAL.]

A true transcript from the records. Teste:

GEORGE C. SEATON, *Clk.*

Fee for copy record is $28.75.

And at another day, to wit, in the clerk's office of the circuit court of the United States for the eastern district of Virginia, on the 18th day of March, 1872, the following stipulation of counsel was filed:

Stipulation of counsel.

It is stipulated that the following facts may be taken and treated as proved in this cause, viz:

That for many years prior to and at the time of the occupation of the city of Alexandria, Va., in May, 1861, by the military forces of
70 the United States, James H. McVeigh was resident in said city and engaged there in the grocery business upon a large scale; that during said period he was the head of a family and a housekeeper, owning the dwelling in which he resided and other real estate in said city; that throughout the rebellion he sympathized with it, and adhered to its fortunes, but did not enagage in its military or civil service; that his absence from Alexandria throughout the rebellion was not one which he regarded as absolute and permanent, but was contingent and temporary, depending for its continuance upon the fortunes of the war.

March 16, 1872.

C. W. WATTLES,
For McVeigh.
S. FERGUSON BEACH,
For Earle & Co.

And now, at this day, to wit, at a circuit court of the United States for the eastern district of Virginia, held at the court-room thereof, in the city of Richmond, on Wednesday, October 22d, 1873, this cause
71, 72 came on this day to be heard upon the bill, answer, replication thereto, exhibits, and stipulation of counsel filed, and was argued by counsel. On consideration whereof, the court doth adjudge, order, and decree that the injunction heretofore granted in this cause be perpetuated, and that the defendants do pay to the plaintiffs his costs by him in this behalf expended.

And the defendants in open court praying an appeal from this decree to the Supreme Court of the United States, an appeal is allowed accordingly, the court fixing the penalty of the appeal-bond at three hundred dollars.

(Signed) HUGH L. BOND,
Ct. Judge.

OCT. 22, 1873.

73 Circuit court of the United States of America, eastern district of Virginia.

ALEXANDER M. EARLE, MORRIS D. EARLE, and JAMES EARLE
vs.
JAMES H. MCVEIGH.

Know all men by these presents that we, , are held and firmly bound unto James H. McVeigh in the sum of three hundred dollars, to be paid to the said James H. McVeigh, his heirs, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this day of , A. D. 186 .

Whereas the above-named Alexander M. Earle, Morris D. Earle, and James Earle hath prosecuted an appeal to the Supreme Court of the

United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the eastern district of Virginia:

Now, therefore, the condition of this obligation is such, that if the above-named Alexander M. Earle, Morris D. Earle, and James Earle, shall prosecute said appeal to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

ALEXANDER M. EARLE. [SEAL.]
JOHN BEALE. [SEAL.]

Sealed and delivered in presence of—
EDWARD L. OWEN,
U. S. Commissioner Southern District of New York.

74 SOUTHERN DISTRICT OF NEW YORK, *ss:*

John Beale, being duly sworn, deposes and says that he resides in the city of Brooklyn, State of New York; that he is worth the sum of six hundred dollars over and above his just debts and liabilities.

JOHN BEALE.

Subscribed and sworn to before me this 6th day of December, 1873.
EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

Approved:

HUGH L. BOND, *Ct. Judge.*

75 UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

I, M. F. Pleasants, clerk of the circuit court of the United States for the eastern district of Virginia, do hereby certify the foregoing to be a true and perfect transcript of the record, process, and proceedings in the cause of James H. McVeigh against Earle & Co., lately depending in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Richmond, in said district, this 31st day of December, in the year of our Lord one thousand eight hundred and seventy-three, and of our Independence the 98th.

[SEAL.] M. F. PLEASANTS, *Clerk.*

Fee, $37.50.

(Indorsement on cover:) No. 131. Alexander M. Earle, Morris D. Earle, and James Earle, partners trading under the firm-name of Earle & Company, appellants, vs. James H. McVeigh. E. Virginia C. C. U. S. Filed 9th January, 1874.

O

Supreme Court of the United States.

OCTOBER TERM, A. D. 1875.

No. 131.

EARLE & CO., APPELLANTS,

vs.

JAMES H. McVEIGH.

BRIEF OF S. FERGUSON BEACH, FOR APPELLANTS.

This is an appeal from a decree of the circuit court of the United States for the Eastern District of Virginia in a suit brought by James H. McVeigh, as plaintiff, against these appellants as defendants.

The object of the suit was to restrain the appellants from enforcing certain judgments which they had obtained against said McVeigh.

The appellants had obtained judgments against him for some twelve thousand dollars.

They had obtained, also, a decree for the sale of his real estate to satisfy these judgments, and they were proceeding with the execution of said decree.

Thereupon said McVeigh filed his bill in this suit, attacking both the judgments and the decree of sale, as invalid, and praying that the appellants might be perpetually restrained from prosecuting their pending proceedings, and all proceedings whatever, to enforce the judgments.

The court below decreed accordingly, and the present appeal is from that decree.

The record in the cause consists of the bill, with exhibits, (page 1 of transcript,) the answer of the defendants, (page 20 of transcript,) and general replication, and stipulation of counsel, (page 27 of transcript.)

THE BILL

avers that at the April term, 1862, of the county court of Alexandria county, Virginia, the defendants, Earle & Co., obtained judgments against the plaintiff, McVeigh, in several actions at law, amounting in the aggregate to some twelve thousand dollars, besides interest and costs.

That the process by which said actions were commenced was returned by the officer, "*Executed the within summons* "*February* 24, 1862, *on James H. McVeigh by leaving a copy* "*thereof posted at the front door of his usual place of abode,* "*neither he nor his wife, nor any white person who is a member* "*of his family and above the age of* 16 *years being found at his* "*usual place of abode.*"

That about six weeks prior to the occupation of Alexandria by the military forces of the United States, on the 24th of May, 1861, his family had left Alexandria on a visit to the county of Loudon, Virginia, and five or six days after the occupation, he himself went up to join them, leaving no white person at his residence, but leaving behind him one Robert Crupper, as his manager and business agent, whose relation as such was well known to the defendants.

That in the fall of 1861, plaintiff went from Loudon and engaged in business in Richmond, Virginia, where his family joined him early in 1862; in May, 1862, himself and family went to Charlottesville, Virginia, and remained there eighteen months; thence to Lynchburg, Virginia, where they remained till the close of the war; all these places, during the period of his sojourn in them, having been in the firm occupation of the Confederate forces.

That this absence of himself and family from Alexandria was well known to the defendants and to their attorney, and to the officer executing said process.

That, as he was informed and believes, his place of residence in Alexandria, soon after he left, was seized and occupied by the United States military authorities as a hospital, and was so used and occupied at the date and pretended service of said process, and that the return on said process was false and fraudulent, and that no copy was ever posted as stated, and that the judgments were therefore null and void.

That after obtaining the judgments, the defendants, Earle & Co., instituted in said county court, a chancery suit to subject the real estate of the plaintiff to the lien of the judgments, proceeded by publication in said suit, obtained at the June Term, 1865, a decree for the sale of the property, and, at the filing of the bill, (June, 1871,) were proceeding to execute the decree, and had advertised the property for sale.

That he had no knowledge of the judgments until some time after they were rendered, and no knowledge of the decree to sell the property, until shortly before the filing of his bill, and thereupon the prayer is that the sale may be restrained by injunction, and that both the judgments and the decree may be declared null and void, and be set aside.

The exhibits with the bill are transcripts of the records of said judgments, and of the decree for the sale of the real estate for their payment.

THE ANSWER OF EARLE & CO.

sets forth that they did recover judgments in the Alexandria county court, as stated in the bill, and that the return on the process, by which the actions were commenced, is, also, as stated.

They aver, however, that said return was true in every

particular—not false and fraudulent—and that the process was, in fact, executed in exact conformity with the return; that the plaintiff's place of residence in Alexandria, at the date and service of said process, was not in the occupation of the United States forces for any purpose, but was then, and had all the while previously remained, precisely in the condition in which the plaintiff left it—in the undisturbed charge of Robert Crupper, his manager and agent—ready for the plaintiff's occupation at the moment of his return, and that, up to the rendition of the judgments, there never existed, at any moment, any obstacle to his return, which was not the result of his own voluntary action; that the movements of plaintiff, during the war, were doubtless as stated in the bill,—that defendants knew, and had for many years known, Mr. Crupper, as plaintiff's confidential clerk and agent; that defendants were wholesale grocers in New York, and the plaintiff was a wholesale grocer in Alexandria; that for many years they had had large transactions with each other in the course of said business; that the judgments were for the value of goods sold by them to the plaintiff, evidenced by his notes falling due, some before, and some after, the military occupation of Alexandria; that the plaintiff, having left Alexandria, and made no provision for the notes, defendants went down to look after them; found plaintiff absent; saw Mr. Crupper who knew all about them; conferred, fully, with him, as to the course best to be pursued, and, as the result of the conference, instituted the actions at law, with a view to secure a judgment lien upon plaintiff's real estate, having no purpose then to do more: that, having obtained the judgments, they, for several years, forbore any step to enforce their satisfaction, hoping for the plaintiff's return and an adjustment, without further resort to law; that when this prospect had grown faint, and longer delay threatened them with serious loss, they instituted the necessary proceedings in the said county court, and obtained a decree for the sale of this property at

the June term, 1865, of said court; that plaintiff soon after returned to Alexandria,—found there his agent, Mr. Crupper, who was thoroughly familiar with all that had been done in his absence; subsequently saw and conversed with defendants about the action taken by them,—and expressed his entire satisfaction with their course, saying they (and other creditors who acted in like manner) had done exactly as he would have advised them to do; that in a spirit of indulgence they forebore, after his return, to force the sale of the property, and at last resorted to it, only when it seemed that further postponement would produce no benefit to either party, and thereupon they aver that both the judgment and the decree of sale are above all impeachment, upon any ground whatever, and that the sale of the property should be allowed to proceed.

THE STIPULATION,

in substance, sets forth that at the time of the military occupation of Alexandria, in May, 1861, and for many years previously, the plaintiff resided and did business in Alexandria; was the head of a family and a housekeeper there, owning the house in which he lived; that he sympathized with, but did not actively participate in, the rebellion, and that his absence from Alexandria, throughout its continuance, was one which he regarded, not as absolute and permanent, but only temporary and contingent, depending for its continuance on the fortunes of the war.

THE QUESTIONS ARISING

on this record are: 1st. The validity of the judgments referred to; 2d. The validity of the decree directing the sale of the property for their payment.

1. As to the validity of the judgments.

It is to be observed that no complaint is made that the debts sued for were not justly due and owing.

The judgments are not assailed upon any such ground, but on the ground, solely, of the absence of McVeigh from Alexandria at the time when they were rendered, and before and afterwards.

It must be conceded that the judgments were valid, if the county court of Alexandria, in which the actions were brought, had jurisdiction over the subject-matter of the actions, and over the person of the defendant in the action. If these suits were properly brought in the county court of Alexandria, and the defendant was duly served with the process therein, then the judgments rendered in the suits are above all question, in any collateral proceeding.

The statute of Virginia, as to the proper courts in which to institute actions of debt, is, that a defendant may be sued in the county in which he resides.

Was McVeigh, then, a resident of Alexandria in February, 1862, when these actions were commenced? If he was, and if he was legally served with process in the actions, then the validity of the judgments is conclusively established.

On this point, the facts, as they appear on the record are, that for many years prior to and at the time of the occupation of Alexandria, by the Federal forces, in May, 1861, McVeigh was resident in Alexandria, permanently settled there, with his family, and engaged, there, in an extensive business; that a few days after the occupation, he left Alexandria and joined his family, on a visit to the neighboring county of Loudon; that he left with no purpose of remaining away permanently, or of making any change in his residence, that his dwelling in Alexandria was left in the care of his servants, and his absence was the ordinary one of a person going from home for a temporary purpose, merely. Sympathizing, however, with the rebellion, and waiting upon its fortunes, he remained away until its close, moving about from point to point within the Confederate lines, establishing no fixed residence, *animo manendi.*

It being agreed that in May, 1861, Alexandria was the county of his residence—the county in which he was to be sued, if sued at all—did such an absence from Alexandria as above described terminate his residence in Alexandria, so that he could be no longer sued there? Did he, by such an absence, withdraw himself from the jurisdiction of the courts of Alexandria?

Alexandria being his residence in May, 1861, it continued to be his residence, for all jurisdictional purposes of its courts, until that residence was abandoned and a new residence was fixed elsewhere.

"A domicile once acquired is presumed to continue until it is shown to have been changed. Where a change of domicile is alleged, the burden of proving it rests upon the person making the allegation. To constitute the new domicile two things are indispensible: First, residence in the new locality; and, second, the intention to remain there. The change cannot be made except *facto et animo*. Both are alike necessary. Either without the other is insufficient. Mere absense from a fixed home, however long continued, cannot work the change. There must be the *animus* to change the prior domicile for another. Until the new one is acquired, the old one remains. These principles are axiomatic in the law upon the subject."

Mitchell *vs.* United States, 21 Wallace, 353.

McVeigh was, therefore, a resident of Alexandria, and was properly sued in Alexandria in February, 1862, when these suits were brought; was he legally served with process in these suits?

The statute of Virginia regulating the service of process provides for three modes of service, either of which is valid. These are, 1st, delivery of a copy to the defendant; 2d, delivery of a copy to his wife or some member of his family, with an explanation of its contents, when the defendant is not found at his usual place of abode; 3d, posting a copy at the front door of his usual place of abode when neither the

defendant nor any white member of his family, above six teen years of age, is found there.

Process served in either of these three ways is legally served; service by one method is equivalent to service by either of the other methods; the first is equivalent to the third, and the third is equivalent to the first.

In the present case service was by the third method—strictly and exactly according to that method.

McVeigh, then, was legally served with process in these actions, and being resident in Alexandria and properly sueable in the courts of Alexandria, the judgment rendered in the actions were valid.

A critical examination of the bill in this case will show that the real ground of complaint against the judgments is, that the suits were brought and prosecuted to judgment without actual knowledge of the defendant that any such suits were pending until after the judgments were rendered. There is no complaint that the judgments are for an incorrect amount. The complaint is that McVeigh had no actual knowledge that any such suits were going on until he found judgments entered up in them.

Actual knowledge is not at all necessary to the validity of a judgment. If it were, a debtor, so disposed, might render a judgment against him impossible.

Constructive knowledge is, in such matters, equivalent to actual knowledge, and a defendant has constructive knowledge whenever process is served upon him in the mode prescribed by law.

There was in this case the constructive knowledge which satisfies the legal requirement—process was served in accordance with law, and the judgment founded on that process was as valid as though the service had been by delivery of a copy to him in person.

The case presents the question whether a debtor can voluntarily put himself within the territorial limits of an insurrection — absent himself from his residence — and,

awaiting there, the issue of the insurrection, be all the while relieved from the civil jurisdiction of the courts of his residence, and exempt from legal process and judgment at the suit of his creditors.

Questions very like, if not identical with this, have been several times considered by this Court, in Ludlow *vs.* Ramsay, 11 Wallace, 581, where it was held that a voluntary absentee in such a case could not complain of legal proceedings regularly prosecuted against him in his absence; again, indirectly, in University *vs.* Finch, 18 Wallace, 111, and, again, in McQuiddy *vs.* Ware, 20 Wallace, 14, a case presenting striking points of resemblance to the case now in hand.

But besides the facts hereinbefore mentioned bearing on the question of residence, the Legislature of Virginia (the Wheeling Legislature, as it is known, and which then embraced Alexandria in its jurisdiction,) passed an act February 10, 1862, entitled

"*An Act declaring certain persons non-residents, and providing for proceedings against them as such.*

"1. *Be it enacted by the General Assembly of Virginia*, That any person or persons who shall have voluntarily left or who shall hereafter voluntarily leave his or their usual place or places of abode, and who shall have gone or who shall hereafter go, into the armies of the so-called Confederate States, shall be deemed non-residents, and may be proceeded against by attachment or otherwise, as is now provided for by law against non-residents.

"2. *Be it further enacted*, That any person or persons, reputed to be in sympathy with the Southern rebellion, or with the so-called Confederate States, who shall have voluntarily left or who shall hereafter voluntarily leave his or their usual places of abode, and who shall have gone or who shall hereafter go, out of the reach of personal service of civil process issuing from the county in which such person or persons last resided, and who shall so remain for ninety days after having left such usual place of abode, shall be deemed non-residents, and may be proceeded against by attachment

or otherwise as is now provided by law against non-residents.

"3. *Be it further enacted*, That in proceedings under this act the affidavit required may be in the form provided by law in attachments against non-residents.

"4. This act shall be in force from its passage."

Acts of 1861, Regular Session, page 58.

It is contended for the appellee that the effect of this act was to make McVeigh a non-resident of Virginia, so that there could be no valid constructive service of process upon him, except by publication.

If this act did *not* operate to unfix his residence in Alexandria, but left him as before a resident of Alexandria in the eye of the law, liable to be sued and served with process like any other resident of Alexandria, then there is nothing in the operation of the act to militate against the judgments.

What, then, was the object and purpose of this act? It will scarcely be argued that the purpose of this act was to confer any special privileges or exemptions upon the persons described in it. The history of the period when the act was passed, (February, 1862,) and still more the relations between these persons and the legislature which passed it, should be conclusive on this point.

The Wheeling State government was established on the basis of adherence to the Union, and the whole body and spirit of its legislation, so far as it relates to the rebellion, and those participating in or sympathizing with it, was of the most rigorously adverse character. Its legislature was not intent upon devising safeguards for those in arms against it, or upon relieving them from the legal remedies already existing for the collection of claims against them. Its policy was directly the contrary, and this act was passed, not to settle any question of residence in respect to these persons; not to exempt them from any legal process to which they were already liable; but to subject them to other and additional process to which, but for this act, they would not have been liable.

Under the law of the State as it stood before the passage of this act, the property of *residents* was not liable to attachment. It was liable to levy under final process only.

The chief purpose of the act was to extend the operation of the attachment law, so as to bring within it the persons described in the act, and to make their property subject to levy under mesne as well as under final process.

It was not intended to make regulations on the subject of domicile.

No act of legislation *could* make a man who was actually residing in Virginia with no purpose of leaving it, a *non*-resident of Virginia, though it might make him liable in certain cases to be *treated* as a non-resident.

But whilst furnishing this new remedy, the act does not abridge or impair remedies and processes previously existing; it does not provide that the persons described *must* be proceeded against as non-residents, and in no other way; on the contrary, all former processes are left as fully as ever available, so that, at the time of the institution of the present suits, McVeigh might have been proceeded against either as a non-esident under this act, or as a resident of Alexandria, liable to be sued and served with process there as before. In either case the proceedings would have been "*regularly prosecuted against him.*"

The suggestion that this act was intended to substitute a method of serving process on the persons described in it, better suited to their situation,—newspaper publications for posting at the front door of the dwelling-house,—comes with light force when it is remembered, that newspaper publication to one beyond a line which no newspaper could pass, was no improvement for purposes of actual notice, upon posting at his usual (though temporarily abandoned) place of abode.

On the foregoing views it is therefore submitted that at the date of the institution of the suit in the Alexandria county court, and at the date of the service of process

therein, the appellee was legally a resident of Alexandria, amenable to process from its courts—and that his absence from Alexandria, under the circumstances existing, necessitated no other or different proceedings against him than those which would have been effective had he remained at home.

But suppose there had been, in reality, some defect in the service of the process which prevented the jurisdiction of the court from attaching, in the actions, it is further submitted that the appellee, by failing to resort to the remedy provided by law in such cases, lost, if he ever had, any claim to equitable relief.

Under the statute of Virginia, whenever judgment by default has been rendered, and there has been error of fact for which it ought to be set aside, provision is made for summarily correcting the error by motion to the court in which the judgment was rendered.

See Code of Virginia, 1873, chap. 177.

"Sec. 1. For any clerical error, or error in fact, for which a judgment or decree may be reversed or corrected, on writ of error *coram nolis*, the same may be reversed or corrected, on motion, after reasonable notice, by the court; or, if the judgment or decree be in a circuit court, by the judge thereof in vacation.

"Sec. 5. * * * Every motion under this chapter shall be after reasonable notice to the opposite party, his agent, or attorney in fact or at law, and shall be within five years from the date of the judgment or decree."

This provision afforded an obvious and ready remedy to the appellee had there been any error in fact in the service of the process. And it was one to which he was bound to have resorted, and to have resorted promptly, if he intended to contest the judgments.

With a full knowledge of the judgments, he could not, in

equity, forbear a resort to this remedy until the act of limitations barred a new suit on the original cause of action, and then be allowed, by a perpetual injunction, to defeat the plaintiff's claim altogether.

Had there been any defect in the service of the process which prevented jurisdiction from attaching, the subsequent proceedings, on motion, under the statute, would have been set aside back to the point where the error occurred. The actions would then have gone forward, as pending actions, to a proper judgment.

This form of relief, if the appellee was entitled to any relief, would have been effective to him, and just in its operation to the appellants.

It will be seen that the judgments were rendered in April, 1862, and the suit to restrain the enforcement of the judgments was begun in June, 1871.

2. As to the decree of sale:

On this point it is not understood that there is any serious controversy.

If the judgments were valid, they created a lien upon the real estate of the judgment debtor, and the judgment creditors were entitled to have it sold for the payment of the judgments. They, therefore, filed a bill stating the fact and the amount of the judgments—the lien on the real estate—the existence of other judgments which also created a lien, asked a report of the amounts and priorities of the judgments, and for a sale of the property to satisfy them. Report was made and a sale ordered accordingly.

The complainant only alleges against the decree of sale, (page 3 of transcript,) that he is "advised that the decree so "rendered for the sale of his property on the order of publi- "cation against him is illegal and fraudulent, and should be "treated as a nullity," without alleging wherein the fraud or illegality is supposed to consist.

In Virginia land cannot be sold under execution, so that

the lien of a judgment can only be enforced by the decree of a court of equity.

Jurisdiction to make such decrees is in the courts of the county in which the land is situated, and where the judgment debtor is a non-resident of the State, process against him is executed by publication.

Under the Wheeling statute, before cited, and the admitted facts which made it applicable to this appellee, proceedings to subject the real estate, in the present case, were rightly commenced by publication. The defendant in the judgments belonged to the class of persons who, under that statute, might be treated and proceeded against as non-residents, so that the presence of the property and the publication against the judgment debtor gave complete jurisdiction to the court, and the decree of sale made in the exercise of that jurisdiction was above all collateral question.

And had there been any error of fact or of law in the decree of sale, the statute of Virginia furnished, as in the case of the judgments, a ready remedy for the correction of the error, of which the appellee wholly neglected to avail himself.

By the Code of Virginia, (1873, chap. 166, § 16,) after provisions for entering judgments and decrees on publication, it is provided that—

"Any * * * defendant, who was not served with process, and did not appear in the case before the date of such judgment, decree, or order, * * * may, within five years from that date, * * * petition to have the case reheard, and may plead or answer, and have any injustice in the proceedings corrected."

Assuming the judgments to be valid, the remedy provided by this statute was the one to which the appellee should have resorted, if any injustice was done him by the decree of sale—for failing to resort to which, he offers no excuse.

Summing up the foregoing it is submitted that the actual and legal residence of the appellee in May, 1861, being shown to have been in the city of Alexandria, his legal residence was still there in February, 1862, (the date of the service of process on which the judgments were rendered,) no voluntary change of legal residence having been made in the meanwhile; that the act of the Wheeling Legislature had no effect to change such legal residence, that act being intended only to enlarge the range of legal proceedings against him; that the judgments were, therefore, rendered by a court of competent jurisdiction and are, consequently, above collateral impeachment, except for causes not suggested as existing in this case.

And, even if the absence of the appellee from Alexandria, under the circumstances then existing, rendered any other than the ordinary methods of serving process essential to a valid judgment against him, and the judgments were invalid, because the extraordinary method was not pursued, his exclusive remedy was by motion under the statute, whereby injustice to him could have been corrected without injustice to the appellants.

And if the judgments are valid, the decree of sale for their satisfaction is also unassailable.

S. Ferguson Beach,
Counsel for Appellants.

Alexandria, Va., *Dec.* 23, 1875.

IN THE SUPREME COURT OF THE UNITED STATES.

ALEX'R EARLE *et al.*,
vs.
JAMES H. McVEIGH,
No. 131.

December Term, 1875.

BRIEF OF JOHN HOWARD FOR McVEIGH.

The proceedings and the statute law of the case have been correctly stated in the brief of Mr. P. Phillips, of counsel for the appellee, and a restatement of the same by me would be needless repetition.

I.

The alleged judgments were nullities, and fraudulent in law.

The bill of injunction filed by McVeigh in the circuit court of Alexandria, and which was removed by Earle & Co. to the circuit court of the United States, in substance charges that on the 24th of February, 1862, about nine months after he had abandoned Alexandria and had gone into the interior of Virginia to join his family (who had preceded him), and while he was thus residing within the Confederate lines with his family, which he continued to do during the whole war, Earle & Co. instituted against him actions at law in the county court of Alexandria, and caused process to be returned executed upon him on that day, by posting a copy at his alleged "usual place of abode" in Alexandria, when at that very time the said Earle & Co. and their attorney, and the officer who made the pretended return of process, well knew the fact of his said absence from Alexandria, and abandonment of his usual place of abode therein, and the fact of his continued stay and residence within the Confederate lines; that said return was "false and fraudulent;" that, in point of fact, the place at which process was posted was not at that time his "usual place of abode," and that the said return of "executed," and the judgments by default entered thereon, are illegal and fraudulent, and should be annulled and set aside, as the complainant was advised. Here

was the direct charge on Earle & Co., their attorney and the returning officer of fraud, in making and causing to be made a fraudulent return to the court of process upon which its jurisdiction was to be founded, and also a fraud in the procurement of the judgments which were entered upon such false and fraudulent return of process.

To this bill it will be observed no demurrer was filed, and it is obvious that if demurrer had been filed it must have been overruled.

The bill was taken for confessed as to the attorney, and was answered only by Earle & Co. That answer denies the fraud charged, but it in effect confesses the above stated facts on which the charge of fraud was founded, and from which, it is submitted, fraud in law was a direct and incontrovertible inference. (See Adams vs. Adams, 21 Wall, 185.) Intentional fraud in such case need not be imputed or proved, for whatever may be the intention of a party who brings his suit, and in order to give jurisdiction to a court causes a return of process to be made which is false in fact, and known to be so by him and his attorney and the officer who makes the return, the fact itself of making and causing to be made such false return is a fraud in law, alike upon the defendant and upon the court; and so also the obtaining of a judgment upon such false return—known at the time to be false, and the fact concealed from the court—was another direct and distinct fraud in law. And no denial of intention to commit a fraud in fact can alter the legal effect of what is in itself a fraud in law. The effect is the same in both instances. Thus this court said in *Kibbe vs. Benson*, 17th Wallace, page 629: "The case falls within the scope of the authorities in which relief is given against a judgment. When Turner made affidavit that he served the declaration, by delivering the same to John Benson, at the dwelling-house of his son, he erred either as to the law or the fact. If he did not deliver the paper to Benson at all he was wrong in his statement of fact. If he did deliver it he was wrong in his conclusion that he delivered it at the dwelling-house of his son. A judgment has been entered where the service was insufficient, and the defendant has had no opportunity to defend his estate. It is not necessary to decide upon the conflicting evidence. It is a case where either by fraud, or by accident, or by mistake, without fault on his part, the defendant has been deprived of the opportunity to make his defence, and within the rule laid down by C. J. Marshall, the judgment must be set aside, and an opportunity afforded to test the question in a court of law."

The said answer of Earle & Co. made many averments not respon-

sive to the bill, but were distinct averments of affirmative matter, which were put in issue by the replication of McVeigh, and no evidence was adduced to sustain them, and in fact the only evidence in the cause, besides exhibits filed with the bill, was a short stipulation of counsel to be found on page 27 of the record, having no reference to those outside and unsupported allegations, which need not be further noticed.

What, then, is the real question?

It is not, as seems to be assumed by the opposite counsel, whether Mr. McVeigh should be punished in his person or property for having been in rebellion, for no criminal indictment has been found against him, nor can any be now improvised against him in this cause before this court, which is not sitting as a court of criminal jurisdiction. nor as a court of confiscation of property for political offences at the instance of private creditors. Nor is it whether one form of constructive notice is more effective than another to communicate actual notice; for one form of constructive notice is as legally effective as another, provided it be legally executed. Nor is the true question whether the defendant was indebted to the plaintiffs in the amount of the judgments against him, obtained by default in his absence, and without actual or constructive notice; for that was the very matter which the defendant had a right to put in issue, upon a due notice and opportunity of being heard. Nor is it whether, as stated by opposite counsel, "a man can voluntarily put himself in the territorial limits of an insurrection, absent himself from his residence, place himself within the limits of an insurrection, and, awaiting there the issue of that insurrection, be all the while relieved from the civil jurisdiction of the courts of his residence, and thus exempt himself from legal process and judgments at the suit of his creditors."—Mr. Beach's brief, p. 8, 9. I concede that this cannot be done; and it was so held in Ludlow *vs.* Ramsey (11th Wall., 581), where it was decided, in the language of the opposite counsel, "That a voluntary absentee in such case cannot complain of legal proceedings, regularly prosecuted against him in his absence." But then the "legal proceedings" must be "*regularly prosecuted*" against him.

The true question, therefore, is, whether said judgments sought to be enforced by the chancery suit were legally obtained; whether the court that rendered those judgments had acquired jurisdiction by proper process legally executed?

If the court had not acquired jurisdiction, the judgment in each case was of course a nullity; for judgment is founded on proper process legally executed; and in all civilized countries a man's property cannot

be taken from him by judicial proceedings without notice and the opportunity of defense, and the object of process is to give such notice.

Notice may be actual or constructive. But if constructive, the rule is that all the requirements of the law allowing or prescribing constructive notice must be fairly and fully complied with. The reason of this is obvious. For if it were otherwise, the result would be equivalent to giving no notice at all and the door to fraud would be spread wide open. The rule, indeed, is still stronger—all the requirements of the law must be strictly complied with. *e. g:* Boswell v. Otis, 9 How. 336; Gordon v. Gibbon, 12 Cal. 100; McMinn v. Whedan, 27 Cal. 314; Forbes v. Hyde, 31 Cal. 342; Hahn v. Kelly, 34 Cal. 392; Bardsley v. Hines, 34 Iowa, 1. 7; Murrell v. Montgomery, 25 Mich. 73; Botsford v. O'Conner, 57 Ill. 72; Piggott v. Snell, 59 Ill. 106; Bunnfield v. Dyer, 7 Bush (Ken.), 505; Harrington v. Hofford, 46 Miss. 41; Hyslop v. Happocks, 5 Benedict, 447; S. C. 6 Bankrupt Reg. 552; Touro v. Coates & als., 10 Mass. 25; Galpin v. Page, 18 Wall. 351.

In common law and chancery proceedings, provisions for constructive notice are wholly of statutory origin and regulation. They imply of course the absence of actual service of process on the defendant in person; and different modes are adapted to give constructive notice. Sometimes it is done by posting; sometimes by publication in the newspapers.

The whole matter is the subject of local legislation and requirement.

In Virginia the modes of giving constructive notice of a suit have always been different as to residents and non-residents, as from the nature of things it was necessary and proper they should be. During a long period of profound peace, posting "at the usual place of abode" was one method prescribed as to *resident defendants*, and publication was authorised where the party resides in the State, but in what particular county is unknown; as to *non-residents*, service of process was by publication. See Code of Va. 1860, p. 703, secs. 1, 2, and p. 707, sec. 10.

Who are to be deemed in law residents or non-residents is a question of fact under the law: In this sense, residence is a mixed question of law and fact, but when the law is fixed by statute, or is otherwise ascertained, the only question in a given case is, what are the facts? And in this connection it is important to observe the distinction between the residence of a person in a legal sense and his "usual place of abode." A man may be the resident of a state, and yet have no usual place of

abode at all in the state, and he may have a usual place of abode in a state, and yet not be in a legal sense a resident of the state; just as a person may be an inhabitant without being a citizen, and a citizen may not be an inhabitant though he retains his citizenship. See Picquet *vs.* Swan, 5 Mas. 35, 47. And a man may change his usual place of abode in a state at any time without ceasing to be a resident of the state: thus McVeigh in this case, had he remained in Alexandria during the war, might have changed his place of abode in that city as often as he chose without ceasing to be a resident in a legal sense either of the city or of the state; and in order to serve legal process upon him by "*posting*," it would have been necessary to have posted the process, *not* at his *last* "usual place of abode," but at his actual "usual place of abode" at the time process was posted. For the statute does not say that the process may be served by posting at the *last* place of abode, but at *the usual place of abode* of the defendant: that is to say, at his *then actual* place of abode; and the context of the statute providing that such posting shall be done only when the officer cannot find upon the premises either the wife of the defendant or a white person who is a member of his family and above the age of sixteen years, to whom a copy of process may be delivered, conclusively shows that this construction of the statute is correct. A subpœna to appear and answer a legal proceeding "cannot be served at the last, or last usual place of abode, but must be left at the existing personal dwelling-house, or the existing, personal, usual, customary place of abode of the defendant." Blatchford J. in Hyslop *vs.* Happocks, 5 Benedict Rep. 447, S. C. 6 Bankrupt Reg. 552. And see Touro v. Coates & als., 10 Mass. 25, where a party was absent on a voyage to South America at the time the suit was commenced, after which more than a year elapsed before his return into the Commonwealth; and the service of process upon him was by leaving a copy at his "last and usual place of abode;" and the court said the statute, in authorising service "by leaving a copy at his usual place of abode, could not intend the case of one absent at sea, who could not obtain knowledge of the service for a long time." Here McVeigh, *nine months before the posting*, had, together with his family, departed from Alexandria, and had abandoned his former place of abode therein; and also all of his estate, real and personal, in the city; had voluntarily fled into the Confederate States, then at war with the United States; was at that very time a public enemy as to Alexandria, *and to every place and every inhabitant therein;* and all of his said property was liable to seizure and confiscation as the property of "an enemy and a rebel," and also as

"captured and abandoned property," and the record shows that he did not, for more than *three years after the posting*, return into Alexandria; and it does not appear that he has ever at all—now more than *fourteen* years since his departure from and abandonment of his former usual place of abode—resumed its occupancy. It is thus obvious, as a plain matter of fact, that the place at which the process was posted was not the place of abode of the defendant sued, and therefore the case did not come within the statute; and by consequence that the corporation court of Alexandria never acquired jurisdiction *in personam* to render the so-called judgments, and that they were simply *nullities*.

But it is equally obvious that Earle & Co. were not without a perfectly clear and easy remedy.

During the late war a class of cases arose in that part of the state of Virginia under the jurisdiction of the Wheeling Legislature, which had not been provided for by statute. Many persons in sympathy with the Confederate cause had abandoned their usual place of abode and gone either to Europe or to some of the Northern States, where they had friends, or as happened most generally, through the Federal lines into the Confederate states, where they remained during the war either in active participation in hostilities against the Federal Government, or in open sympathy with the cause of its enemies.

The legislature doubtless saw the folly and absurdity and indeed impossibility of serving or attempting to serve process upon such a defendant, by posting it at the "front door of his usual place of abode," when, as a well known matter of fact, he had no usual place of abode within reach of the officer. Any return of an officer that he had served process upon such a defendant would have borne a solemn falsehood upon its face. For could the officer with any truth have made such a return when he knew that such a defendant had not only abandoned his late usual place of abode, but was then actually as a matter of fact abiding in a foreign or hostile country?

It was to meet and cover this class of cases, that the Act of Assembly entitled "an act declaring certain persons non-residents, and providing for proceedings against them as such," was passed. The whole act is as follows:

"CHAPTER LXIV.

"*An act declaring certain persons non-residents, and providing for proceedings against them as such. Passed February* 10, 1862.

"Be it enacted by the General Assembly of Virginia, That any person or persons who shall have voluntarily left, or who shall hereafter

voluntarily leave his or her usual place or places of abode, and who shall have gone, or who shall hereafter go into the armies of the so-called Confederate States, shall be deemed non-residents, and may be proceeded against by attachment or otherwise, as is now provided by law against non-residents.

"2. Be it further enacted, that any person or persons reputed to be in sympathy with the Southern rebellion, or with the so-called Confederate States, who shall have voluntarily left, or who shall hereafter voluntarily leave his or their usual places of abode, and who shall have gone, or who shall hereafter go out of the reach of personal service of civil process issuing from the county in which such person or persons last resided, and who shall so remain for ninety days after having left such usual place of abode, shall be deemed non-residents, and may be proceeded against by attachment or otherwise, as is now provided by law against non-residents.

"3. Be it further enacted, that in proceedings under this act, the affidavit required may be in the form now required by law in the attachments against non-residents.

"4. This act shall be in force from its passage."—*Acts of Gen. Ass. passed at Reg. Sess. held Dec.* 2, 1861, *at Wheeling, p.* 58.

The title of the act sufficiently shows its general purpose. That was to declare certain persons non-residents in law and to provide for proceedings against them as such, and the object of the act is fully carried out by its provisions.

The first section includes persons who had voluntarily left or should voluntarily leave *their usual places of abode*, and who had gone or should thereafter go into the armies of the so-called Confederate States. The second section is of a wider scope, and embraces all persons reputed to be in sympathy with the Confederate States who shall have voluntarily left or should thereafter voluntarily leave their *usual places of abode*, and who shall have gone or who shall hereafter go out of the reach of personal service of civil process issuing from the county in which such person or persons last resided, and who shall so remain for ninety days after having left such *usual place of abode;* and it is declared that both classes should, at least for purposes of giving jurisdiction to the courts, be declared "non-residents, and be proceeded against as such."

It was under this statute that Earle & Co. instituted the chancery suit to enforce the said alleged judgments, and they rely upon Ludlow *vs.* Ramsey in support of the validity of their decree of sale founded upon an order of publication as to a defendant who had acted under similar circumstances pretty much as McVeigh had done. And it must be admitted that the said statute, having prescribed and determined the classes of persons in question who should be deemed in law non-resi-

dents, and to be proceeded against by order of publication as such, and James H. McVeigh, having been confessedly and upon the proofs such a non-resident, the jurisdiction of the chancery court duly obtained by order of publication, was clear and unquestionable; for the validity of that statute depended upon the general authority and power of the Legislature to provide and prescribe how process shall be served or notice given alike as to residents and non-residents, and the incidental power to define and ascertain who are residents and who are non-residents, or shall be deemed such for the purposes of jurisdiction; and the *status* of McVeigh as such a non-resident having been thus established by a positive statute and the admitted facts of the case, the case in this court would be clearly against him, if the judgments stood upon the same foundation as the chancery decree, which was duly entered after an order of publication made in compliance with the statute.

But unfortunately for the appellants, the judgments do not rest upon that foundation. For though the statute was in full force when the action at law was instituted, and McVeigh was by force of the statute and the actual facts of the case in contemplation of law a *non-resident* as much so as he was when the chancery suit was instituted by order of publication, the actions at law proceeded against him as both in law and fact an actual resident and as actually occupying his *late "usual place of abode."* The statute was passed on the 10th day of February, 1862, and McVeigh had at that time been nine months within the Confederate States, and was notoriously in sympathy with their cause—so much so that he had abandoned his home and all his earthly possessions to join his family and friends, like sympathizers with himself in that cause. He had thus "voluntarily left his usual place of abode" and "gone out of the reach of the service of civil process issuing from the county in which he last resided," and had so remained not only "ninety days," but three times "ninety days," after having left such *usual place of abode*, and he was, therefore, at the date of the passage of the act, and had long been, clearly and fully within its terms. Indeed, the act had been passed to meet just such a case as his, for which there had been up to that time no provision in the law.

The actions at law were instituted against him, and the farce of posting process on the front door of his late usual place of abode was gone through with, on the 24th day of February, 1862, when the statute was in full force and operation.

It necessarily follows, therefore, that the common law court had no jurisdiction to render the said judgments against McVeigh. It may be

true the writ issued from the proper court, but it was neither issued nor executed according to law. The return of the officer upon the writ was plainly untrue, and the bill charges and it is not denied that Earle & Co. and their attorney who brought the suit and the officer who posted the process knew the facts, which showed that the said return was untrue; for they knew that McVeigh had at that time abandoned his late *usual place of abode* for at least nine months, and that he was then out of the reach of personal service of civil process issuing from the county in which he last resided and had been for that length of time.

It is immaterial, however, whether they knew these facts or not. The important fact was, that at the time of said posting said house was not the usual abode of McVeigh; and the still more important facts are, that under the statute and the circumstances of the case McVeigh was, in legal contemplation for the purpose of jurisdiction, a non-resident, and should have been proceeded against as such under the statute in the same manner as he was proceeded against in the chancery suit; and no valid reason can be assigned why that course was not taken. When the chancery suit was brought, the same facts and none other existed that existed when the action of law was brought. If the court had jurisdiction in the chancery suit, it was because McVeigh was reported to be in sympathy with the "Southern rebellion," and because he had voluntarily left his usual place of abode and gone out of the reach of the service of civil process, &c. But if these things were true in 1864, they were equally true on the 24th February, 1862; and if they were true on the 24th February, 1862, then it is absolutely clear that the court acquired no jurisdiction in the common law case, and the judgments fall to the ground, and of course there is no lien to be enforced by the chancery suit.

This curious dilemma is therefore presented to the appellants: If the chancery decree was valid as being founded on process regularly executed, the common law judgment was invalid for the reasons that made the chancery decree valid; and if the common law judgment was valid, the chancery decree was invalid for the reasons which made the common law judgment valid.

In view of the foregoing considerations, it is unnecessary to discuss the questions suggested in the brief of the opposing counsel as to whether McVeigh, for all purposes in a legal sense, ceased to be a resident of Alexandria, or what his intentions were in leaving or returning, if he ever did return, or whether he established a new residence in a legal sense within the Confederate States; for whether or not he ceased

to be a resident of Alexandria, under the facts of the case he certainly ceased to have a usual place of abode there from May, 1861, until after the war, and indeed the record does not disclose that he has ever since had any usual place of abode at all in that city. And as to whether he acquired a legal residence in the Confederate States, that is apart from the issue; it is sufficient that at the date of the common law writs he had no usual place of abode in Alexandria, and that under the statute and the admitted facts of the case he was a non-resident at that time for the purposes of jurisdiction, and was to be deemed and proceeded against as such.

We do not contend for the appellee, as is imputed to us by the counsel for the appellants—page 10—"that the effect of this act was to make McVeigh a non-resident of Virginia." Our contention is, first, that whether McVeigh was or was not, in a legal sense, a resident of the city of Alexandria, on the 24th of February, 1862, when the process purports to have been executed on him, by posting a copy thereof at his "usual place of abode," in point of fact he had "no usual place of abode" at that time in that city, and that the fact was well known to the plaintiffs in the action, and that the said return was false in fact and fraudulent in law; and that the judgment in each case obtained thereupon was a nullity, because the court never acquired jurisdiction over the defendant in the action.

Our contention secondly is, and this concerns the construction of the statute of the 10th of February, 1862, *not*, as is supposed by the opposite counsel—page 10—that the act operated to unfix the residence of McVeigh in Alexandria in a legal sense, but that its whole object and scope was to define and declare what persons, in their relations to the Confederate States, and their sympathies therewith, should be considered in contemplation of law as non-residents, so far as conferring upon the courts jurisdiction against them was concerned, and to provide a mode for proceedings against them as such. The act does not determine the residence or the non-residence of any particular person, and it does not undertake to do so, but it prescribes what should be considered as evidence sufficient to constitute non-residency for the purpose of giving jurisdiction to the courts against all persons who, upon the facts in each case, should be found to come within the classes enumerated in the act. Before that act, ample provision had been made by the statutes for the *attachment* of the *property* of non-residents within the jurisdiction of the courts, and for proceedings by publications against non-residents whose property was attached. And if such pro-

ceedings by *attachment* as against non-residents had been instituted, either at law or in equity, against McVeigh, to attach his property in Alexandria, it might have been difficult, if not impossible, even as the old law stood, to have denied the jurisdiction of the court, under the circumstances, upon the ground that McVeigh was in point of fact a resident. The design of the act of February 10th, 1862, was to bring clearly within the provisions of the foreign attachment law against non-residents the classes of persons who had acted as Mr. Veigh had done, and also, in addition, to confer jurisdiction upon the courts as to such classes, *in personam*, by constructive notice, as well as by attachment *in rem*. Undoubtedly the act was not designed in favor of such classes of persons; on the contrary, it was directly levelled at them. It was intended to confer and establish additional remedies against them, and as has been shown, if the act had been pursued in this case, there could have been no pretence to say that the corporation court had not acquired jurisdiction *in personam* over McVeigh in the actions at law. That not having been done, the bare question recurs whether the common law court had jurisdiction to render judgments against a man without notice? And that question has been answered for the hundreth time by this court in the case of Terrell vs. Allison, 21st Wallace, pp. 291–2, where it is said that "it is a rule as old as the law that no man shall be condemned in his rights of property, as well as in his rights of person, without his day in court—that is, without being duly cited to answer respecting them, and being heard or having opportunity of being heard thereon."

It has not been deemed at all necessary to contend that the appellee was in point of law and fact a non-resident at the time of posting. But was not that true? He did not, indeed, as the war terminated, cease to be a citizen of the United States by abandoning then his property and his home. But unquestionably he ceased to be an actual resident, and became and remained an actual resident within the Confederate States, and this residence continued and was designed to continue for at least the indefinite period of the duration of the war.

It is not deemed necessary to go into an extended discussion of what constitutes a change of domicile. It is acknowledged to consist of a concurrence of fact and intention. The definition of domicile now most generally accepted is that given by the court in the leading case of Guier vs. Daniel, 1 Binney R., 349; S. C. 1 Am. Leading Cases, 879. It is there said to be "a residence at a particular place, accompanied with positive or presumptive proof of continuing there *for an unlimited*

time." This definition is adopted by Phillimore. See Phil. on Domicile, 57, Law Library, p. 18, sec. 15 and note J., and the authorities there cited.

This court in the *Frances*, 8 Cranch, calls it "a permanent settlement for an *indefinite time.*"

Here the intention to abandon Alexandria on the occasion of the war, was actually executed. The *animus* and the *factum* concurred. Here also the intention to go into and remain within the Confederate States, at least during the war, was actually executed, and the fact and the intent concurred. Here was permanent residence with his family in the Confederate States for an *indefinite time; for the duration of the war* was uncertain and indefinite. It may be true that this was done for a special purpose, but that will not alter the matter. In the Harmony, 2 Rob. Admr. Rep., pp. 224, 225, Lord Stonewall laid down the law upon this point, in a manner which has commanded the approval of succeeding jurists. "It is not unfrequently said," remarked that great international magistrate, "that if a person comes only for a special purpose, *that* shall not fix a domicile. This is not to be taken in an unqualified latitude and without some respect to the time which such a purpose may or shall occupy; for if the purpose be of a nature that *may probably*, or *does actually*, detain the person for a great length of time, I cannot but think that a general residence might grow on the special purpose. A special purpose may lead a man to a country where it shall detain him the whole of his life. * * * * Suppose a man comes into a belligerent country at or before the beginning of a war; it is certainly reasonable not to bind him too soon to an acquired character, and to allow him a fair time to disengage himself; but if he continues to reside during a good part of the war, contributing by payment of taxes and other means to the strength of that country, I am of opinion that he could not plead a special purpose with any effect against the rights of hostility." See also Phil. on Dom., p. 96.

Here the property of Mr. McVeigh on the high seas would have been subject to capture by the government from which he had departed, and all of his real estate was actually seized for confiscation by that government in the exercise of "rights of hostility."

The Supreme Court of Appeals of Virginia have decided a precisely similar case to this.

In Taylor vs. Hutchison, it appeared that Hutchison, who was a citizen of Virginia, residing with his family in Alexandria and doing business in the city of Washington, before the war, on the morning of

the 23d of May, 1861, went into the interior of Virginia, whither his family had preceeded him, and he remained within the Confederate lines during the whole war. The court said: "It is conceded that in May, 1861, Hutchison left the city of Washington, came to Virginia where his family resided, and remained in the State until after the close of the war, where he was engaged part of the time in mercantile pursuits for himself, and part of the time was a clerk in the Treasury Department of the Confederate States, located in Richmond. Whatever may have been his intention when he left in May, 1861, as to his returning to Washington, he, in fact, became domiciled in Virginia; united his fortunes with the Southern Confederacy; remained during the whole war within the Confederate military lines, *a subject of that government.* He thus became domiciled in Virginia and a citizen of this State, then at war with the United States, and at the capital of which his partner was domiciled." Taylor vs. Hutchison, 25 Grat., 536.

The Supreme Court of Virginia held this in favor of Taylor, a loyal man, and against Hutchison, who had acted exactly as McVeigh had done. Why, as a matter of law, and of general jurisprudence, to be scanned by the nations, upon a question of the actual, though illegal, change of residence, should not any court of the United States decide the same case in the same way? The appellee has thus been shown to have been, at the time in question, not a resident of Alexandria, and it follows necessarily that the so-called judments were *nullities.*

II.

As to the jurisdiction of equity to enjoin the judgment nullities, and their enforcement in the chancery suit.

The object of the bill was to enjoin the enforcement by a suit in chancery of the judgment nullities. It will thus be observed that the so-called judgment creditors had themselves first appealed to equity jurisdiction, and that they have been simply met in the same jurisdiction by their adversary. The bill charges fraud in the institution of the chancery suit in effectuation of the original fraud in procuring the judgments without notice. The bill, in effect, is an answer to the bill in the chancery suit, and a cross-bill in that suit, and an answer and cross-bill in that suit might have served all the purposes of this bill, if the attorney, who brought the actions at law and procured the judgments (who was also acting as commissioner of sale), had been a party to that suit, and could thus have been made a party to a cross-bill.

The bill, therefore, is substantially a defence in equity to the en
ment in equity of the nullities asserted in the chancery suit.

Why has not equity jurisdiction, when its aid is invoked to co
mate a wrong, to hear the other side, upon whom the wrong is s
to be consummated?

Let it be supposed, however, that this bill is only a direct
upon judgments which are nullities, and also fraudulent in law.

1. That void judgments—judgments obtained without notice-
be disregarded and put aside every where, even in collateral procee
is familiar law. *E. g.*, *Railroad Co.* v. *Trimble*, 10 Wall. 371, 3

It appears, in that case, by the record of a suit introduced collat
as evidence in the action, that General Trimble, "on or about the
April, 1861, absconded to parts unknown, abandoning the sai
partnership business, and took up arms against the government
United States, became a major-general in the so-called Confe
States army; was afterwards captured, and is now (1864) held at
ston's Island, on Lake Erie, as a prisoner of war of the United St
which was the reason given for not serving process upon him, or g
him actual or constructive notice.

This court said, "Looking into the record, we find no evide
the issuing of any process against Trimble, or that he was notif
the pendency of the suit by publication or otherwise. It does n
pear that there was any step whatever taken to bring him befo
court. The entire proceeding, as disclosed, was *coram non judi*
void." And being void, it was treated as a nullity.

[And it may be well asked here if there be any difference be
the non-issuing of process and the non-service of process, so far
validity of a judgment is concerned?]

2. The procurement of the nullities upon the return of pr
known to be false, is charged and shown to have been fraudulent,
upon the court and the defendant; fraudulent in law (whatever it
have been in fact), and the facts are admitted upon which the fra
law is shown; and like fraud is charged and shown in the insti
and prosecution of chancery proceedings (regular upon their fac
effectuation of the fraud at law. Directly in point is *Kibbe* v. *Be*
17 Wall. 624.

3. And that, on a bill filed for the purpose, equity will arr
judgment or decree of another court, procured through fraud, as i
set aside every other fraud, is elementary. 1 Story's Eq., sec. 252

4. But there was no demurer to the bill, general or special, ar

equity upon the case stated was therefore admitted; and Earle & Co, having submitted to answer, without objection, to the bill, it was too late thereafter to object to equitable jurisdiction, and especially in an appellate court.

It is true, that towards the end of the answer it is vaguely and generally stated that the remedy was at law, but how or where was not indicated. And here, now, for the first time (for the point was not made in the court below) it is suggested, *arguendo*, that the Circuit Court of the United States had no equitable jurisdiction to enjoin a fraudulent judgment, which was also a nullity as well as a fraud, because there was a supposed concurrent remedy at common law in a State court.

If such concurrent jurisdiction existed:

(1.) It would not take away the original jurisdiction of equity. King vs. Baldwin, 2 American Lead. Cases (Hare & Wallace), 372.

(2.) No time can confer validity upon a nullity—*centuries cannot do it.* 7 Robinson's Practice, pp. 37, 38.

(3.) The fraud of attempting to enforce the nullities by a sale, under proceedings in equity, was promptly attacked and arrested by this bill as soon as the attempt to sell was made.

7. But in point of fact, there never was any remedy at law in the Corporation State Court, by writ of *coram nobis*, or motion in its stead, as is now for the first time argued in this appellate court.

The said nullities were so-called judgments by default. The writs, with the endorsements thereon, were part of the record, according to Virginia law and practice recognized and affirmed by this court. 1 Robinson's Va. Practice (Ed. 1832), 654; Nadenbush vs. Lane, 4 Rand. 413; Wainwright vs. Harper, 3 Leigh, 270; Harris vs. Hardeman, 14 Howard, 339.

The jurisdictional facts thus appeared and were made part of the record, and necessarily of the judgment of the court founded upon them; and final judgment was rendered because it thus "appeared that the plaintiffs," in the action upon the face of the record, were thus "entitled thereto." pp. 9, 10.

One of the fundamental jurisdictional facts thus made part of the record, and entering into the judgment as its basis, was the judicially recognized and adopted fact that the posting was at the then "usual place of abode" of the person sued.

The Supreme Court of Appeals of Virginia, in construing the State statute in question, have decided that such a case is not embraced by the statute, holding as settled law that on a writ *coram nobis* or its

substituted motion, the verity of the record cannot be contradicted or put in issue. Richardson vs. Jones, 12 Grat., 55, 55. (Code of Va., 1860, ch. 181, §§ 1 and 5; Code of 1873, ch. 177, §§ 1 and 5).

And this is in accordance with old established law. See 3 Bacon's Ab. tit. Error (K. 3), p. 371 (citing Ro. Abr. 757), where it is stated as a "general rule that nothing can be assigned for error that contradicts the record, for the records of the courts of justice being things of the greatest credit, cannot be questioned but by matters of equal notoriety with themselves; wherefore, though the matter assigned for error should be proved by witnesses of the best credit, yet the judges could not admit it."

In this connection, it is important to observe and keep in remembrance the broad distinction between a defective service of process and a total want of service. In Harrington vs. Wofford, 46 Miss. 41, 42, the Supreme Court of Mississippi well say: "There is a very clear and obvious destinction between a total want of service of process and a defective service of process as to their effect in judicial proceedings. In the one case, the defendant has no notice at all of the suit or proceedings against him. The judgment or decree in such case, it is conceded, is *coram non judice* and void, upon the principles of law and justice. In the other case, the defective service of process gives the defendant actual notice of the suit or proceeding against him, and the judgment or decree in such case, although erroneous, would be valid until reversed by a direct proceeding in an appellate jurisdiction, and its validity cannot be collaterally called in question; and this view of the law is believed to be sustained by reason, principle and authority."

And this distinction is fully recognized by this court in Hollingsworth vs. Barbour, 4 Pet., 477.

Undoubtedly, upon a writ of *coram nobis*, an extraneous fact—a fact *dehors* the record—such as infancy or coverture in the defendant at the time of the institution of the suit, or the rendition of the judgment may be shown, but in such cases there has been regular service of process, and the parties before the court when the judgment was rendered, on a writ of *coram nobis*, and proof of the extraneous fact of disability to be sued does not contradict the record or put its verity in issue. Here, however, the record states as a fundamental jurisdictional fact the very thing which it would be necessary, on a writ of *coram nobis*, to controvert, to wit: that process had been legally served upon the defendant by posting at his usual place of abode, and of course the record must be contradicted and disproved to be true (or the suit would fail),

which, as has been shown, cannot in the Virginia Courts be done. If a record should show that the court had judicially passed upon a question of infancy, or converture, or upon any other question of fact, the finding or judgment of the court could not be reviewed upon such a writ; only a writ of error would lie—and if nothing appeared in the record to show error upon the question of fact, but on the contrary, every thing appeared to be regular and right upon the face of the record, the writ of error would be fruitless, and would amount to no remedy at all. Such is precisely the case here.

If the actions at law had been brought in the circuit court of the United States for the District of Virginia, instead of the State corporation court of Alexandria, upon a writ of *coram nobis*, in the United States court, under the recent decisons of this court (which had not then been rendered) in Thompson vs. Whitman, 18 Wall., 457; Galpin vs. Page, 18 Wall., 350; and Knowles vs. Gaslight Co., 19 Wall., 58, the jurisdictional fact of service of process might possibly have been open to inquiry.

But the actions at law having been brought in the State court, and the supreme court of the State having, in construing the State statute in question, held that the motion substituted for a writ of *coram nobis* does not apply to such a case, that decision was of course conclusive upon McVeigh.

Those decisions, however, of this court just referred to, plainly indicate that even in a collateral proceeding a person who has not, as a matter of fact, had notice, actual or constructive, may show the fact *aliunde*, and be protected; *and a fortiori*, it follows that such fact and the actual truth may be shown in a direct attack in chancery of a judgment without notice, and especially when fraud is charged in its procurement.

8. The only other forlorn hope of the appellants is found on p. 14 of brief of opposite counsel, citing Code of Va. (1873), ch. 166, § 16, to show that a defendant not served with process may, and as it seems to be argued, therefore *must*, within five years, petition to have the case reheard. By an examination of the whole chapter of the Code, it will be plainly seen that § 16, taken in connection with its other provisions, applies only to "returns of nihil and orders of publication." This is made still more apparent by referring to the Code of 1860, ch. 170, which was the law at the time of these proceedings, and which was reenacted with variations and additions in the Code of 1873. In ch. 170 of the Code of 1860, pp. 707, 708, there were 13 sections, the 9th,

10th, 11th, 12th and 13th referring to "returns of nihil and orders of publication." In ch. 166 of the Code of 1873, there are 17 sections, in which material changes and additions are made in the law, coming in after the 10th section of the Code of 1860, ch. 170, and with some confusion the section 13th of the Code of 1860 is placed as section 16th of the Code of 1873. By a simple comparison of the two Codes, it is apparent that it was not intended by either to have any reference to a case like this, in which there was no "return of nihil or order of publication," and in which there was an absolute absence of any notice, actual or constructive. It would be imputing to the Legislature a folly, wickedness and absurdity unknown in any civilized country to say that the Code, either of 1860 or of 1873, was designed to apply to a case without notice; and if such was the design, it was plainly beyond the scope of legislative power.

But such was not the design; and accordinnly it will be seen by an examination of the decisions of the Supreme Court of Appeals of Virginia, upon the acts in question and acts *in pari materia*, that they have no reference to a case *in pursonam* without notice, and refer only to proceedings *in rem*. Rootes vs. Tompkins, 3 Grat., 111, where the court say: "A construction which would lead to a different result would violate the principles of natural justice, which forbid that any man should be condemned unheard, and would be impute to the legislature the intention of giving to the courts of the Commonwealth jurisdiction throughout the earth;" and see James River & Kanawha Co. vs. Little John, 18 Grat. p. 74, citing the said case in 3 Grat., 111, and 9 How. N. S. R., 336, and 24 How., 195.

In conclusion, it is right to say that the appellee desires and asks no injustice against the appellants.

The injunction to the judgments does not affect the proceedings prior to the judgments, and the actions at law, if properly instituted, stand as of the day of their institution, although process was not legally executed. No statute of limitations, therefore, has any thing to do with the matter, and all the appellee wants is the plain right which belongs to him, and to which he is entitled by the decisions of this court, in times and ways without number, to be heard, upon notice, as to the large demands asserted against him. And as to the allegation *arguendo* that the appellee waited until a new suit was barred, in the first place it does not appear that such a thought ever occurred to him, if indeed there was any bar to a new action; but secondly and conclusively, the

appellants themselves appear to have waited until, as seems to have been supposed, an imagined common law remedy was barred as to the appellee; and they now complain that their nullities were arrested as soon as a practical attempt was made to enforce them.

JOHN HOWARD,
For appellee.

ERRATTA.

Page 12, 14th line from top, read "Stowell" for "Stonewall."

Page 16, 7th line from bottom, read "and on a writ of *coram nobis*," instead of "on a writ of *coram nobis;* and."

Page 16, 8th line from bottom, after the word "parties" insert "were."

Page 18, 18th line from top, read "*personam*," instead of "*pursonam*."

Page 18, 26th line from top, read "How. U. S. R.," instead of "How. *N.* S. R."

Supreme Court, United States.

ALEX. EARLE, *et. al.*,
vs.
JAMES H. McVEIGH. } No. 131.

Brief of P. PHILLIPS.

McVeigh filed his Bill in the Circuit Court of Alexandria—charging that the appellants had, at the April Term, 1862, recovered certain judgments against him. The writs being dated the 12 February, 1862, and the return thereon in the following words:

"Executed the within summons 24 February, 1862, on James H. McVeigh, by serving a copy thereof, posted at the front door of his usual place of abode, neither he or his wife, nor any white person who is a member of his family and above the age of 16, being found at his usual place of abode." p. 2.

Earle & Co. had, in 1864, filed their Bill in said Court of Alexandria, to subject the real estate of complainant to the the satisfaction of said judgments, and to procure service upon him, averred that he, the complainant, "is reported to be in sympathy with the so-called Confederate States; that he has voluntarily left his usual place of abode in said city of Alexandria, and has gone out of reach of personal service of civil process issuing from the County Court of Alexandria, in which he last remained for more

than ninety days after having so left, and still so remains." p. 3.

Upon this averment, an order was entered which reciting its terms, directs that the defendant McVeigh, "appear here within one month after due publication of this order, and do what is necessary to protect his interests in this suit, and that a copy of the order be forthwith inserted in the Virginia State Journal, a newspaper published in the city of Alexandria, once a week for four successive weeks, and posted at the front door of the court house of this county." 13.

Proof of publication having been made the Bill was taken *pro confesso*, a decree for sale entered at the June Term 1865, and the property advertised for sale by S. Fergurson Beach, as Commissioner, on the 13 May, 1871.

On the 10 June, 1871, McVeigh filed his Bill for an injunction, assailing the validity of the judgments, on which the decree was made. It further charges, that the return to the summons "was false and fraudulent; that it was not posted at the front door of his usual place of abode as the law directs; that the judgments rendered thereon, are illegal and should be set aside. The Bill further avers that the family of McVeigh left Alexandria for Loudon six weeks before the occupation by the Federal forces, to wit, 24 May, 1861; and that some five ~~weeks~~ days subsequent to the occupation he also left and joined his family, and that he remained with his family within the confederate lines until the close of the war, and this was well known to Earle, his counsel S. Fergurson Beach, as well as to the officer who executed the summons. Further, that the rendition of the judgments were unknown to him for some time after, and the existence of the decree of sale was not known until a very recent period.

On this Bill a preliminary injunction was
the complainant executor's bond for that pur

The Earles filed their answer, insisting tha
of the summons was legal, and if otherwise the remedy was at law. p. 20.

S. Ferguson Beach, the other defendant, failed to answer, and a decree *pro confesso* was entered as to him.

A replication to the answer was filed and the cause set down for hearing, with the motion to dissolve the injunction, and on the 11 Nov., 1871, a decree was entered overruling the motion to dissolve. p. 24.

On the 5 November, 1871, the Earles petitioned for a removal of the cause to the Circuit Court, United States, under the act 27 July, 1866.

This was done, and the case was again heard by Judge Bond, the counsel having stipulated that on the trial it should be admitted that McVeigh was a resident for many years, of Alexandria, prior to the Federal occupation in May, 1861. That during that time he was extensively engaged in business, was the head of a family, owning the dwelling-house in which he resided, and other real estate. That he sympathized with the rebellion, but did not engage in its military or civil service. That his absence from Alexandria, throughout the rebellion, was not one which he regarded as absolute and permanent, but contingent and temporary—depending upon its continuance upon the fortunes of the war. p. 27.

On 23 October, 1873, a second decree was rendered as follows:

"This cause came on to be heard upon the bill, answer, replication, exhibits, and stipulation of counsel, and was argued by counsel. On consideration whereof the court doth adjudge and decree, that the injunction heretofore granted in this cause be perpetuated, and that the defendants pay to plaintiff his costs." Hugh L. Bond. p. 27.

The case is now here on the appeal of the Earls from this decree.

Under the laws of Virginia this judgment is a nullity; no proper service having been made on defendant.

Personal service as a general rule is necessary.

But the laws provide for three cases in which this personal service cannot be effected. *First.* In cases of residents who are temporarily absent from home. *Second.* In cases of non-residents of the State. *Third.* In cases where the party resides in the State, but in what particular county is unknown.

In the first case the statute prescribes that a summons or notice may be made "by delivering a copy thereof in writing to the party in person; or if he be not found at his usual place of abode by delivering such copy and giving information of its purport to his wife, or any white person found there, who is a member of his family, and above the age of sixteen years; or if neither he nor his wife, nor any such white person be found there, by leaving such copy posted at the front door of said place of ~~above~~."

abode

As to persons not residing in the *State*, notice "may be served by the publication thereof once a week for four consecutive weeks in a newspaper printed in the State." Code of 1860. p. 703.

The third class is provided for in the following section:

"On affidavit that a defendant is a non-resident of the State, or that diligence has been used to ascertain in what county or corporation he is without effect, or that process directed to the officer of the county or corporation in which he resides or is has been twice delivered

to such officer more than ten days before the return day, and been returned without being executed, an order of publication may be entered against such defendant." Code p. 707, sec. 10.

Thus stood the law prior to the late war, and it is sufficient to say that statutes which substitute constructive for personal service are to be construed strictly.

1 Smith's Leading Cases, 837. Boswell v. Otis, 9 How., 350.

When the law provides for notice posted on the "front door of said place of abode" in the absence of the family, it evidently intends that the person against whom this notice is directed should then be living in the house. He may be absent at the time for an hour, or a day, or a week, but this house must be his usual place of abode so that when he returns home the notice on the front door will notify him, and this is all that the law requires.

The law, by the expression of the usual place of abode, does not mean the last place of abode, for a party may change his place of abode every quarter. It is only on the door of his present residence that this posting can be made.

Now, the case shows that the family of McV
Alexandria six weeks before the Federal occu
May, 1861, and that he left about the ~~1st Ju~~
leaving no white person in his former residence
was well known to Beach, the attorney of the Earls as well as to the officer who made the return on 24th February, 1862, which was *seven months after McVeigh had left the county* and was residing within the Confederates lines.

It is therefore evident that when this posting was made on the front door, the house was not his usual place of abode, and a judgment founded on such a defective notice is an absolute nullity.

To meet just such a cases as McVeigh's, an act was passed on the 10 February, 1862, entitled, "AN ACT DECLARING CERTAIN PERSONS NON-RESIDENTS, AND PROVIDING FOR PROCEEDINGS AGAINST THEM AS SUCH," as follows:

"Be it enacted by the General Assembly of Virginia, That any person or personss who shall have voluntarily left, or who shall hereafter voluntarily leave his or her usual place or places of abode, and who shall have gone, or who shall hereafter go into the armies of the so-called Confederate States, shall be deemed non-residents, and may be proceeded against by attachment or otherwise, as is now provided by law against non-residents.

"2. Be it further enacted, that any person or persons reputed to be in sympathy with the Southern rebellion, or with the so-called Confederate States, who shall have voluntarily left, or who shall hereafter voluntarily leave his or their usual place of abode, and who shall have gone, or who shall hereafter go out of the reach of personal service of civil process issuing from the county in which such person or persons last resided, and who shall so remain for ninety days after having left such usual place of abode, shall be deemed non-residents, and may be proceeded against by attachment or otherwise, as is now provided by law against non-residents.

"3. Be it further enacted, that in proceedings under this act, the affidavit required may be in the form now required by law in the attachments against non-residents.

"4. This act shall be in force from its passage." *Acts of Gen. Ass.. passed at Reg. Sess., held Dec. 2, 1861, at Wheeling. p. 58.*

That McVeigh was, in all respects, within the description of this act is fully shown by all the circumstances of the case.

He had left Alexandria some seven months when this act was passed; his whole family having preceded his exodus six weeks previously. He abandoned a large grocery business in which he was then engaged, and was known, as is admitted by the agreed statement, "throughout the rebellion to have sympathized with it and adhered to its fortunes."

When the Earles filed their Bill to subject McVeigh's real estate to the payment of these judgments, they aver that he is "in sympathy with the so-called Confederate States, and that he has left Alexandria, where he last resided, and has remained for more than ninety days after having so left, and still so remains."

The Bill describes him then as falling within the very letter of the description in the act last cited; and if, when the Bill was filed, *publication* was the mode of service prescribed by law, it was equally so when the service of the summons was made in February, 1862.

On the showing made when the Bill was filed the judge made the order for publication under the act as cited at p. 13.

As to the Equity of the bill there would seem to be no difficulty.

When, after the close of the war, McVeigh returned to Alexandria, he found that the Earls had filed their bill in the Chancery Court of Alexandria, to subject his real estate to the payment of these judgments; that there had been a reference to the master, who had made a report; that the report had been confirmed, and that a decree had been rendered, directing S. Ferguson Beach to make a sale of said property, and that Beach had advertised the sale to take place on 13 May, 1871.

The advertisement was made on the 12 April. On 10 June, 1871, McVeigh filed his bill in the Alexandria Chancery Court, praying for an injunction, and that the judgments may be decreed null, and the decree ordering the sale of his real estate may be reversed.

It is difficult to understand on what ground the prayer of such a bill can be held to be not within the equity jurisdiction.

P. PHILLIPS,
for Appellee.

25. Grattan. 146.

House on abolishing proceedings. Statutes 3. Section 13 —